

WILLIAMS SHIPPING MARINE LIMITED

CONDITIONS OF TRADING

1. Interpretation

- 1.1 **"Company"** means Williams Shipping Marine Limited (company no: 02324176) whose registered office is at Manor House Avenue, Millbrook, Southampton SO15 0LF and any member of its Group to which the Contract may be assigned pursuant to clause 18 below.

"Conditions" means together these conditions of trading and the Special Conditions.

"Contract" means the contract between the Company and the Customer for the provision of the Services.

"Contract Documentation" means the Company's written acceptance of the Customer's order for the Services and the Company's price lists current at the date of that acceptance.

"Customer" means the person, firm or company for whom the Company is carrying out the Services under the Contract.

"Group" means in relation to a company, that company and each and any subsidiary or holding company from time to time of that company (as defined in section 1159 of the Companies Act 2006).

"Price" means the price specified in the Contract Documentation.

"Services" means the transportation of passengers and goods as referred to in the Contract Documentation and any other services referred to in the Contract Documentation.

"Special Conditions" means the particular conditions (if any) relating to the Services which are set out in the Contract Documentation.

- 1.2 In the event of any conflict between these Conditions and the Special Conditions, the Special Conditions shall apply.
- 1.3 All quotations are given, all orders are acknowledged and accepted, all the Services are performed and all invoices are issued on and subject to these Conditions, to the exclusion of any other terms which the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.4 If any preliminary communications, statements, representations, undertakings or understandings of any kind are not incorporated in these Conditions in writing as above, then they shall be of no effect.
- 1.5 No addition to or variation of these Conditions shall be effective unless it is in writing and signed by an authorised representative on behalf of the Company.

- 1.6 Headings are for convenience only and shall not affect the interpretation of these Conditions. A reference to one gender shall include all genders.

2. **Performance**

- 2.1 In consideration of the Customer paying the Price, the Company shall perform the Services in accordance with these Conditions. For the purposes of these Conditions, performance by any servant or agent (including but not limited to any member of the Company's Group) nominated by the Company shall be deemed to be performance by the Company.

3. **Price and Payment**

- 3.1 The Price and all other sums payable under the Contract are exclusive of Value Added Tax and all other tax and duties which may be payable in respect thereof ("**VAT**"). VAT at the appropriate rate shall be paid by the Customer in addition.
- 3.2 The Customer shall pay the Price and all other sums becoming payable to the Company under the Contract together with any VAT payable in respect thereof within fourteen days of the date of the Company's invoice thereof, unless alternative payment terms are agreed in writing prior to the commencement of the Services. Payment shall be made in full and cleared funds to the Company's nominated bank account in pounds sterling.
- 3.3 If the Customer shall fail to pay in accordance with 3.1 above, then without Prejudice to any other rights which may be available to it, the Company shall be entitled:
- 3.3.1 to suspend the provision of any outstanding Services or (at its option) to terminate its obligations to supply the same; and
- 3.3.2 at its absolute discretion to charge interest on the amount due from the date for payment until payment is actually received (whether before or after any judgement) by the Company. Such interest shall accrue on a daily basis at the rate of 4% per annum above the Bank of England's base lending rate for the time being in force.
- 3.4 If at any time the Company is not reasonably satisfied as to the Customer's ability or willingness to pay for the Services in accordance with the Contract it shall be entitled to call for payment in full of the Price (together with VAT) properly payable in respect thereof before the Services (or the outstanding balance thereof) are undertaken.
- 3.5 Where the Contract provides for payment by instalments, default in making any one or more payments in full on the date specified in the Contract Documentation shall render all outstanding instalments immediately due and payable.
- 3.6 In relation to the Customer's obligations to make payments, time is of the Essence.

- 3.7 All Goods which are the subject of the Services shall be subject to a lien for all monies due to the Company in respect of the Price or any other monies payable in connection with such Goods and Services and subject also to a general lien for all monies due to the Company from the Customer upon any account whatsoever and if any such lien is not satisfied within fourteen days from the date upon which the Company gives notice to the Customer requiring the payment of any monies due to the Company as aforesaid then the Goods may be sold by the Company by auction or otherwise as the Company shall see fit at the expense of the Customer and the Goods and/or the proceeds of sale shall be applied in or towards satisfaction of every such lien and of all expenses and charges incurred by the Company in doing so.

4. Delay

- 4.1 Subject to the Company's rights under 4.2 below, the Services shall be performed at the time and on the date specified in the Contract Documentation, or, if not so specified, at the time and on the date notified by the Company to the Customer. If for any reason other than the fault of the Company, the goods or passengers to be carried in performance of the Services are not loaded or embarked (or unloaded or disembarked) by the time and date specified, the Customer shall make payment to the Company in respect of such delay in accordance with the Company's published prices current at the time of the delay or, if none, in such sum as the Company shall reasonably specify to compensate it for the loss suffered as a result of such delay.
- 4.2 The Company reserves the right to cancel or postpone performance of all or any of the Services or to modify the Services or the timing of the performance thereof if and whenever it shall in its absolute discretion think it necessary to do so, whether by reason of inclement weather, in the interests of safety, or otherwise howsoever, and the Company shall not be in breach of the Contract by so doing.
- 4.3 If it shall exercise its right under 4.2 above, the Company shall notify the Customer to that effect as soon as reasonably practicable and shall provide the Customer with a revised time and date for the performance of the Services for the purposes of 4.1 above.
- 4.4 In the event of cancellation of any part of the Services by the Company, the Customer shall be entitled to a commensurate reduction in the Price but shall pay the reasonable costs and expenses incurred by the Company prior to cancellation in connection with the intended provision of the cancelled Services.
- 4.5 In no circumstances shall the exercise by the Company of its rights under 4.2 above entitle the Customer to repudiate the Contract or render the Company liable to the Customer in any way.

5. Company Warranty and Limitation of Liability

- 5.1 The Company hereby warrants that it will use reasonable care and skill in performing the Services and all reasonable efforts to provide the Services at the time or times fixed in accordance with 4.1 and 4.2 above.
- 5.2 Nothing in these Conditions limits any liability which cannot be legally limited, including but not limited to liability for death or personal injury caused by negligence.
- 5.3 Subject to clause 5.2:

- 5.3.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising out of or in connection with the performance or contemplated performance of the Contract shall be limited to an amount equal to the aggregate sums received from the Customer by the Company under the Contract; and
- 5.3.2 the Company shall not be liable to the Customer for:
 - 5.3.2.1. any indirect, special or consequential loss or damage; or
 - 5.3.2.2. for any loss of profit, loss of business or depletion of goodwill.
- 5.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and Sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permissible by law, excluded from the Contract.
- 6. **Claims**
 - 6.1 No claim made by the Customer shall be valid unless the same is notified by the Customer to the Company as soon as practicable after discovery and, in any event, not later than 14 days after completion of the Services. If the Customer fails to give notice in accordance with this provision, the Services shall be deemed to have been duly performed and the Customer shall be bound to pay or and shall lose any right to make a claim in respect of the same.
 - 6.2 Where the subject matter of any claim which is established as valid is capable of rectification, the Customer shall give the Company a reasonable opportunity to make such rectification.
- 7. **Packing**
 - 7.1 Where the Services consist of or include the carriage of goods the Customer shall be responsible (to the exclusion of any liability of the Company) for packing all such goods and for all matters relating thereto (including a clear indication of ownership and destination) to a standard appropriate for open or below deck carriage (as the Company may specify prior to acceptance of the goods for carriage).
- 8. **Custody**
 - 8.1 The Company's period of custody of goods shall commence:
 - 8.1.1 in the case of goods consisting of luggage carried by a passenger being conveyed in the performance of the Services, at the time when the goods are brought on board the Company's vessel by the passenger.
 - 8.1.2 in all other cases, at the time such goods are accepted by an authorised employee of the Company. Signature of any delivery or similar note is no more than an acknowledgement of receipt of the delivered goods and is no indication of the quantity or conditions of the goods, their nature, weight or sufficiency of packing. Custody shall cease immediately upon the goods leaving the deck or hold of the vessel as the case may be.

9. **Duration of Company's Liability**

9.1 The Company's liability as set out in clause 5 hereof shall be limited:-

9.1.1 in the case of goods, to the period of the Company's custody of the goods as described in 8 above, and

9.1.2 in the case of passengers, to the period during which they are on board the Company's vessel.

10. **Dangerous and Valuable Goods**

10.1 Unless such goods are clearly identified in the Special Conditions, the Customer shall not tender for carriage by the Company or permit the Company to carry on its behalf:

10.1.1 Any goods or substances which are in any way hazardous to health or to property of any kind including but not limited to all explosive, radioactive and inflammable goods and all registered poisons or which would or might become so if they or their packaging or containers were in any way defective or damaged (in this clause referred to as **"Dangerous Goods"**); or

10.1.2 Any bullion, cash, securities or other valuable items (in this case referred to as **"Valuable Goods"**); and the Company shall have no liability whatsoever for any loss or damage of such goods.

10.2 Notwithstanding that any goods may be identified in the Special Conditions as Valuable Goods, there shall be no increase in the Company's duty of care (as referred to in 5.1 above) and its liability in respect of any loss or damage to any such goods and the Customer shall bear all risk of loss or damage and shall insure against the same if and to the extent that it thinks fit.

10.3 If any Dangerous Goods are not clearly identified in the Special Conditions then:

10.3.1 the Customer shall indemnify the Company against all loss, damage, expense, penalties, claims, costs and proceedings whatsoever caused by or to or in connection in any way with such goods and howsoever arising, and

10.3.2 the goods may be destroyed or otherwise dealt with at the absolute discretion of the Company (or any other person in whose custody they may be at the relevant time).

10.4 Notwithstanding that any Dangerous Goods are clearly identified in the Special Conditions they may nevertheless be destroyed or otherwise dealt with at the absolute discretion of the Company (or any other person in whose custody they may be at the relevant time) if in the reasonable opinion of the Company they constitute a risk to other goods, property, life or health and the loss resulting from the destruction or other dealing with the goods shall be borne by the Customer.

11. Customer Warranty

- 11.1 The Customer warrants that at the time when any goods are placed in the custody of the Company they will be correctly packed and suitable for carriage and in all other respects fit to be the subject of the Services and that it will have obtained all necessary licences and consents in relation thereto. The Customer further warrants that all passengers to be carried in the provision of the Services will be fit at the time of travel in the Company's vessels and that whilst on the Company's premises or on board the Company's vessels, they will comply with any reasonable requests of the Company and with any applicable standing instructions. The Customer shall be liable for any loss or damage caused to the Company's property by reason of any breach of the above warranties and shall indemnify the Company against any actions claims cost damages and proceedings suffered by, or made or brought against, the Company by any third parties as a result of any such breach.

12. Non-Acceptance

- 12.1 The Customer shall be responsible for all loss, damage or expense suffered by the Company by reason of the non-acceptance of goods or passengers at their destinations and in particular shall pay forthwith on demand, the Company's charges for any further incidental work caused thereby and any other loss, damage or expense caused to the Company including but not limited to any loss of profits.

13. Disposal

- 13.1 The Company shall be entitled at the expense of the Customer and on such terms as the Company shall think fit to sell or otherwise dispose of:
- 13.1.1 on 21 days notice in writing to the Customer or where the Customer cannot be traced after the goods have been held by the Company for 90 days, all goods which in the opinion of the Company cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee or for any other reason;
 - 13.1.2 without notice, perishable goods which are not taken up immediately on arrival or which are insufficiently or incorrectly addressed or marked or which in the opinion of the Company would be likely to perish in the course of carriage, storage or handling. And in either case the Company shall be entitled to deduct from the proceeds of any sale or disposal any costs reasonably incurred but by it in connection with such sale or disposal together with a reasonable charge for the storage (if any) of such goods and shall account for the balance only to the Customer.

14. Access and Place of Work

- 14.1 The Customer shall provide safe access to and upon its property (including without limitation any wharfs, jetties, vessels, rigs or other marine structures) necessary or desirable for the performance of any of the Services and upon such property shall provide a safe place of work for the Company's servants or agents.

- 14.2 The Customer shall be liable for any loss or damage caused to the Company by reason of any breach of its obligation under 14.1 above and shall indemnify the Company against all actions, claims, costs, damages and proceedings which were made or brought against the Company by any third parties as a result of any such breach.

15. **Disclosure**

- 15.1 The Customer warrants and undertakes that it disclosed prior to the making of the Contract (and has since disclosed and shall continue to disclose) to the Company any and all material facts which may affect the Company's decision whether to provide the Services including but not limited to the identity of goods, required conditions of storage and all special perils and to indicate to the Company any precautions which it is advisable for the Company to take. In the event of disclosure after the making of the Contract, the Company shall be entitled to cancel the Contract, modify the Services and/or increase charges to the extent which it shall think fit.

16. **Confidentiality and Data Protection**

- 16.1 Any information supplied to the Customer by the Company and which the Company shall designate as confidential shall not be disclosed by the Customer to any third party or used by the Customer for its own benefit.
- 16.2 The Company shall comply with all applicable data protection laws, including (i) prior to 25 May 2018, the UK Data Protection Act 1998 and the Data Protection Directive (95/46/EC) and (ii) on and after 25 May 2018, EU Regulation 2016/679 or any equivalent or similar legislation implemented in the United Kingdom following the United Kingdom's withdrawal from the European Union. For further information on the Company's use of any Customer data, please see the Company's privacy policy, a copy of which is available on the Company's website.

17. **Force Majeure**

- 17.1 Neither party shall be in breach of contract or otherwise be liable to the other if, by reason of any circumstances whatsoever beyond its control, including but not limited to war, riots, civil commotion, strikes, lock-outs or other industrial action, fire, explosions, requisitions and acts of God, it shall be unable to perform or be delayed in the performance of the Services.

18. **Assignment**

- 18.1 The Contract is freely assignable in whole or in part by the Company to any member of its Group but is otherwise personal to the parties hereto.

19. **Termination**

- 19.1 Without prejudice to its rights accrued prior to termination or arising upon termination, the Company may terminate the Contract forthwith on written notice to the Customer upon the occurrence of any of the following events:

- 19.1.1 the Customer makes default in or commits a breach or of any other of its obligations to the Company
- 19.1.2 any distress or execution is levied upon the Customer's property or assets

- 19.1.3 the Customer makes or offers or proposes to make any arrangements or composition with its creditors
- 19.1.4 any resolution or petition to wind up the Customer is passed or presented, any petition for an administration order in respect of the Customer is presented
- 19.1.5 (where the Customer is an individual) a petition for a bankruptcy order is made against the Customer
- 19.1.6 a receiver or manager, or administrative receiver is appointed in respect of the Customer, its undertaking property or assets, or any part thereof.
- 19.1.7 And if the Customer is a person, firm or company domiciled, incorporated, constituted or resident outside England and Wales, upon the occurrence of any events which are equivalent in the relevant jurisdiction to those stated above.

20. **Governing Law**

- 20.1 The Contract shall be governed by and interpreted in accordance with the laws of England and the Company and the Customer hereby irrevocably submit to the exclusive jurisdiction of the English courts.

21. **Waiver and Severance**

- 21.1 Any indulgence granted by the Company to the Customer and any failure by the Company to insist upon strict performance of these Conditions shall not be deemed a waiver of any of the Company's rights or remedies nor be deemed a waiver of any subsequent default by the Customer.
- 21.2 The invalidity in whole or in part of any clause of sub-clause of these Conditions shall not affect the validity of the remainder of such clause or sub-clause nor of these Conditions as a whole.

22. **Notices**

- 22.1 All notices required to be served by one party upon the other may be served on the other at its address set out in the Contract Documentation. All such notices may be served by first class prepaid letter or facsimile and (in the absence of proof of early receipt) shall be deemed to be served in the case of an inland letter twenty four hours and in the case of an air mail letter seventy two hours after proof of dispatch or positing and in the case of facsimile transmission at 0900 hours on the business day of the recipient party next following its dispatch.