



# SEA CORPORATION PTY LTD

## STANDARD PORT AGENCY TERMS AND CONDITIONS

### Definitions

“Agent” means Sea Corporation Pty Ltd which has accepted an Agency Appointment to act on behalf of an Owner in accordance with these Standard Terms and Conditions.

“Agency Appointment” means a request for Services by the Owner following the issuance of a Pro-Forma Disbursement Account.

“Agency Fees” means the fee, commission, remuneration or other sum payable to the Agent for performance of the Services.

“Disbursements” means any and all amounts which the Agent pays out to a third party on behalf of the Owner in relation to the Services including, but not limited to, any GST, VAT, sales taxes and other applicable taxes and charges.

“Final Disbursement Account” means an account produced by the Agent which describes the Disbursements which have been incurred by the Agent in providing of the Services and the related commissions and fees for the Service and other sums owed by the Owner to the Agent in relation to Services.

“Owner”, when used with reference to any vessel means the registered owner, disponent owner, manager, managing agent, master or other person in charge of the vessel (including but not limited to the Charterers of the vessel).

“Pro-forma Disbursement Account” means an estimated port disbursement account produced by the Agent based upon the Services initially requested by the Owner and which set out the estimated Disbursements which will be incurred by the Agent in providing of the Services and the related estimated commissions and fees that will be charged by the Agent for provision of the Services.

“Port Call Appointment” means any agreement for the provision of Services entered into between the Agent and the Company upon these Standard Terms and Conditions, as amended from time to time, which is formed following the acceptance of an Agency Appointment by the Agent.

“Revised Disbursement Accounts” means a revised or supplementary estimate of Disbursements and the estimated commissions and fees that will be charged by the Agent for the provision of the Services, which may be issued after the Services have commenced, after the Pro-forma Disbursement Account and/or after the Final Disbursement Account has been issued due to an increase or other variation to the scope of Services.

“Services” means all services provided by the Agent to the vessel, or arranged by the Agent to be provided to the vessel, for and on behalf of the Owner, and provided pursuant to express or implied instructions of the Owner or as customary or expected services pursuant to these Standard Terms and Conditions.

“Vessel(s)” means the marine vessel(s) or ship for which the Agent has been appointed to act as Agents for an on behalf of the Owner.



1. The Agent shall be the agent of the Owner (whether or not nominated by the Charterer in accordance with charterparty provisions) and shall exercise, reasonable care and diligence in performing the Services for and on behalf of the Owner.
2. Unless otherwise stated in writing, it is understood and agreed that the Agent acts at all times 'As Agents Only' for and on behalf of the Owner and is deemed to have the actual authority to place orders and/or appoint on the Owners behalf third party suppliers (each a "**Service Provider**" with the services provided by the Service Provider to be known as "**Service Provider Services**") as Agent for the Owner. The Agent shall not be personally liable to pay any debts due to Service Providers from the Owner and will not have any responsibility for the performance of or negligent acts or defaults of any such Service Provider.
3. The Owner undertakes to pay the Agent, as consideration for the Services provided by the Agent, Agency Fees and a sum equivalent to all Disbursements (subject, in the case of Disbursements, to the Agent providing documented evidence that such Disbursements have been incurred). The Agent is also entitled to reimbursement of reasonable out of pocket expenses incurred in the course of provision of the Services. By mutual agreement the Agent shall also be entitled to an additional fee in the event of unexpected occurrences creating an increase in the required scope of Services or delay to the vessel.
4. Prior to the Agent commencing any Services and unless expressly agreed otherwise between the parties in writing, the Owner shall pay by telegraphic transfer one hundred percent (100%) of the value of the Pro-forma Disbursement Account in cleared funds to the Agent's nominated bank account as an advance on the Port call, and any other disbursements which the Agent estimates will be incurred on the Owner's behalf (with any sum paid in advance by the Owner known as "**Pre-funding**"). If the Owner should fail to comply with the Agent's request or comply with the required financial responsibility undertaking this will be considered a material breach of contract on behalf of the Owner, whereby the Agent may:
  - a. at any time give immediate notice of the termination of the Port Call Appointment in writing with immediate effect;
  - b. refuse to provide some or all of the Services; and
  - c. take any necessary measures to detain the vessel in Port until such funds are received in full by the Agent. The Agent shall have a valid and enforceable maritime lien against the Owner's Vessel(s) for all un-reimbursed expenses incurred in connection with performance of Services for the Port Call Appointment of the Vessel, for another previous Port Call Appointment for the same Vessel or another previous Port Call Appointment for the same Owner.
5. Nevertheless, if the Agent does provide some or all of the Services despite the Owner's failure to pay the agreed Pre-funding, the Owner will remain liable to pay the Agent all fees, commissions and Disbursements in relation to the Services.
6. Should the scope of Services or applicable rates for the theses Services increase following the formation of the Port Call Appointment, or if it appears the Pre-funding will be lower than the actual Disbursements and commissions, the Agent shall be entitled to issue one or more Revised Disbursement Accounts specifying a further sum which is required to be paid by the Owner prior to the provision of the relevant Services. The Owners shall pay such amounts specified in the Revised Disbursement Accounts and such sums shall be deemed to be part of the Pre-funding.
7. The Agent shall be entitled to deduct from the sums held by it for the Owner's account any amount due from the Owner.
8. The Agent shall take reasonable care to ensure that the Pro-forma Disbursement Account is as accurate as possible. The Pro-forma Disbursement Account is, however, only an estimate and the



Final Disbursement Account may – and often does for various reasons beyond the Agent's control – vary from the Pro-forma Disbursement Account.

9. Where the Agent has spent time and incurred costs in anticipation of the vessel's call which is subsequently cancelled, or for which the Agent is not appointed, then the Agent shall be duly reimbursed in respect of all time and costs reasonably incurred.
10. Following completion of the Services, the Agent shall submit to the Owner a Final Disbursement Account, taking into account any Pre-funding which has been received by the Agent in cleared funds. The Owner shall and is liable to pay, any such balance stated in the Final Disbursement Account upon demand and no later than three (3) working days of issuance. Any commissions, fees, Disbursements and/or other sums owed by the Owners which become due following the issue of the Final Disbursement Account shall also be payable by the Owner following the Agent providing documented evidence that such sums are payable. If the sums due by the Owner to the Agent are lower than the level of Pre-funding obtained in cleared funds by the Agent, the Agent shall reimburse such excess due to the Owner.
11. If the Owner fails to make payment in full of any sums due to the Agent on demand or within any period agreed in writing, the Agent shall be entitled to recover interest on any sums outstanding at the rate of ten percent (10%) per annum. Such interest shall accrue on a daily basis from the due date until payment in received in full by the Agent in their nominated bank account by. The Agent shall be entitled to claim and recover all costs and expenses, on a full indemnity basis, incurred in the collection of payments due.
12. The Agent shall be entitled to offset any balances owed from the sums held by it for the Owner's account against any other Vessel's, Port Call Appointment's or Services provided to that same Owner.
13. All information and communications (including Pro-forma and Final Disbursement Accounts) provided by the Agent shall be deemed as a trade secret and the sole and exclusive intellectual property of the Agent. The Agent retains sole and exclusive ownership and all right, title, and interest in and to all trade secrets and all other intellectual property, and the principal agrees that such is privileged as between the Agent and Owner. There are no licenses, transfers, and/or assignments of intellectual property granted under these Conditions, whether express or implied. The Owner agrees that the Agent's trade secrets and intellectual property may not be disclosed, shared, or used for any purpose, including but not limited to statistical analysis, other than for settlement of a particular voyage disbursement account, without the express written authority from the Agent. The Owner agrees to give notice to the Conditions to all of its service providers, agents, servants, and other contractors, and to guarantee that they will be bound hereby. Any violation of the Agent's intellectual property rights by any such service provider, agent, servant, or other contractor shall be deemed a violation hereunder by the Owner, entitling the Agent to terminate the Agency Appointment by notification in writing to the Owner and to seek any and all legal remedies provided by law.
14. The parties agree to keep any Confidential Information confidential, not to use it for any purpose (other than in the context of the Services to be provided) and not to disclose it without the prior written consent of the other party to any third party, unless:
  - a. the information was public knowledge at the time of the disclosure;
  - b. the information becomes public knowledge other than by breach of the confidentiality undertaking contained in this condition 13;
  - c. the information subsequently comes lawfully into its possession from a third party;
  - d. is required to be disclosed within the normal course of business; or
  - e. required to do so by any laws or regulations to which the disclosing party is subject.



15. Notwithstanding condition 13, each party shall be entitled to disclose Confidential Information to its directors, shareholders, officers, employees, advisers and consultants having a need to know the same. The Agent may also disclose confidential information to potential assignees or transferees and may disclose confidential information for the purposes of performing its obligations under the Port Call Appointment (such as disclosing information to any sub-agents, Service Providers or representatives of the Agent).
16. The liabilities assumed by the Agent on the provision of the Services shall be covered by a liability insurance policy on such terms with such insurers and in such amount as may reasonably be regarded as customary in the industry by a prudent provider of such services. Without limitation to its general obligation to maintain insurances, the Owner shall ensure that each of its ships, vessels and cargo and other items which are placed in the Agent's or any Service Provider's possession or control in relation to the Services, are fully insured on an indemnity basis against loss, damage and destruction. The Owner will provide the Agent with details of the relevant insurance policies upon request.
17. Nothing in any Port Call Appointment or in these Standard Terms and Conditions excludes or limits the liability of either party:
  - a. for death or personal injury caused by negligence;
  - b. for fraud or fraudulent misrepresentation; or
  - c. for any liability which cannot be limited or excluded by the applicable law.
18. Subject to condition 16, under no circumstances shall either party or any of their Affiliates be liable to the other for any of the following types of loss or damage arising under or in relation to these Standard Terms and Conditions for the Provision of Services or any Port Call Appointment (whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty, or otherwise):
  - a. any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure, any loss of market, any loss or expense arising from detention or delay of a vessel or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
  - b. any indirect or consequential loss or damage whatsoever, even if the parties were aware of the possibility that such loss or damage might be incurred.
19. Subject to condition 16, the Owner undertakes with the Agent that no claim or allegation of any kind shall be made against any of the Agent's directors, officers or employees (hereinafter collectively called "the Agent/Officer") for any loss, damage or delay of whatsoever kind arising directly or indirectly from any negligent act, error or omission of the Agent/Officer in the performance of the Services the subject of these Conditions.
20. In addition, the Agent shall not be liable for any loss or damage (however caused) to cargo, vessels or other items which are placed in the Agent's or a sub-agent's possession or control, except where such loss or damage is caused by the willful misconduct or negligence of the Agent (as applicable).
21. Any claims against the Agent by the Owner must be notified to the Agent in writing as soon as reasonably practicable following the Owner being made aware of such claims. In any case, any claim by the Owner shall be deemed to be waived and absolutely time barred, discharging the Agent from all liability whatsoever, upon the expiry of three (3) months from the act or default or event giving rise to such claim.



22. The Owner shall at all times indemnify the Agent and hold them harmless against all claims, charges, losses, damages and expenses which it may incur in connection with the Service Provider Services (including but not limited to any claim made by a Service Provider) or the performance by the Agent of the Services, unless any such claims, charges, losses, damages and expenses arises directly by reason of willful misconduct or negligence of the Agent. If requested to do so by the Agent, the Owner shall take over the conduct of any claim or dispute which may arise between the Agent and any third party.
23. If the Agent (or a sub-agent appointed pursuant to condition 25) at any time provides any bond, guarantee or other form of security to any customs or other local authorities in any country in connection with the Services provided, the Owner shall indemnify the Agent and hold it harmless from any claims made in relation to such bond, guarantee or other form of security, unless any such claim arises directly by reason of willful misconduct or negligence of the Agent.
24. Without limiting the foregoing terms, if the Agent (or a sub-agent appointed pursuant to condition 25) finds itself, whether by law or otherwise in any country, jointly or severally liable for any liabilities of the Owner or any other party seeks to hold it liable for any liabilities of the Owner, then the Owner shall indemnify the Agent and hold it harmless for any claims made in respect thereof and shall not in any way assert any claim for a contribution from the Agent.
25. The Agent shall have the authority, without prior consultation OR following prior notification to the Owner, to appoint sub-agents to perform any part of the Services on behalf of the Owner, including such services as may be subject to these Conditions. Any such sub-agents may enter contracts with Service Providers for and on behalf of the Owner as if they were the Agent. The Agent shall not be responsible for the negligent acts or defaults of any sub-agents unless the Agent fails to exercise due care in the appointment and supervision of such sub-agents.
26. The primary duty of the Agent in respect of the exchange of ISPS Code compliance information between the vessel and the shore authorities is limited to correctly notifying the Owner of the information required, the date by which it is required and the address to which it must be sent. If the Agent is additionally required to pass the information on, his liability is extended to include ensuring the information provided by the vessel is correctly lodged with the relevant shore authority within the required time limit. Any failure by the Agent to undertake these duties with reasonable skill and care can render the agent liable for the loss incurred. Under no circumstances, however, is the Agent held liable for the accuracy of the information provided by the Owner, or if the Owner fails to make the information available to the Agent within the required time limit or for any other error or failure that may occur which is beyond the Agent's reasonable control. These remain at all times the responsibility of the Owner and/or Vessel.
27. The Agent 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.
28. The parties shall first attempt to resolve any dispute arising out of or in connection with a Port Call Appointment to which these Standard Terms and Conditions apply by negotiation.
29. These Terms and Conditions shall prevail unless otherwise expressly agreed by the parties in writing.
30. Nothing in these Standard Terms and Conditions or any Port Call Appointment shall preclude the Agent from seeking to enforce any outstanding or overdue debt or payable invoice (including, but not limited to, any Pre-funding, Proforma Disbursement Account, Revised Disbursement Account and Final Disbursement Account) owed by the Owner to the Agent under any Port Call



Appointment or under these Standard Terms and Conditions in the courts of any competent jurisdiction in accordance with any relevant local law.

31. To the extent that these conditions conflict with the national law of the country in which the Agent is domiciled, then the national law shall prevail.
32. No amendment or variation of these Standard Terms and Conditions or any Port Call Appointment shall be effective unless in writing and signed by a duly authorised representative of each of the parties.
33. Any consent given by a party shall operate as a consent only for the particular matter to which it relates and in no way shall be construed as a waiver or release of any provision of any Port Call Appointment nor shall it be construed as dispensing with the necessity of obtaining the specific written consent of the relevant party in the future unless expressly so provided.