

TRADE OCEAN SHIPPING NAMIBIA (PTY) LTD

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SHIPS AGENCY DIVISION

STANDARD TRADING TERMS AND CONDITIONS

These Terms and Conditions shall apply to all transactions between the Principal and TOSN and shall be deemed to be incorporated in the appointment of TOSN by the Principal.

1. **INTERPRETATION**

1.1 In these Standard Trading Terms and Conditions, unless clearly inconsistent with or otherwise indicated by the context:

1.1.1 "**Agreement**" shall mean the Order read with these Standard Trading Terms and Conditions;

1.1.2 "**Agency Services**" shall mean such services as may from time to time be required by the Principal, to be rendered by TOSN, in respect of the Vessel and shall include, without limitation, the following services:

1.1.2.1 arranging berths for the Vessel;

1.1.2.2 providing for the entry and clearance of the Vessel;

1.1.2.3 providing for the payment of port charges and any dues payable in respect of the Vessel;

1.1.2.4 arranging for the supply of fuel, water, provisions and deck and engine room stores;

1.1.2.5 arranging for any repairs required to be done to the Vessel;

1.1.2.6 taking charge of and arranging solicitation and booking of cargo for the Vessel;

1.1.2.7 issuing bills of lading and other similar documents to shippers in the form prescribed by the Principal;

1.1.2.8 arranging for stevedoring and other cargo handling operations;

1.1.2.9 arranging for the delivery of cargo in accordance with the bills of lading issued by, or on behalf, of the Principal;

1.1.2.10 taking charge of and arranging solicitation of passengers for the Vessel;

1.1.2.11 arranging the embarkation and disembarkation of passengers and their baggage;

1.1.2.12 issuing passenger tickets;

1.1.2.13 attending to all matters pertaining to the deployment of the crew on the Vessel, including, engaging, signing on, signing off and repatriating crew; and

1.1.2.14 performing all such other activities and duties in connection with the foregoing functions as may be necessary;

1.1.3 "**Business day**" means any day of the week excluding Saturdays, Sundays and/or public holidays in the Republic of Namibia;

1.1.4 "**Goods**" means, *inter alia*, any machinery, equipment, apparatus, or other goods and/or related accessories required for TOSN'S performance of the Agency Services;

1.1.5 "**Order**" shall mean any order, whether verbal or in writing, received by TOSN from the Principal, its agents, representatives, servants or employees, for the provision of Agency Services, which order has been accepted by TOSN, and which order is governed by these Standard Trading Terms and Conditions;

1.1.6 "**Parties**" means the Principal and TOSN; and "**Party**" means either of them as the context indicates;

1.1.7 "**Prime Rate**" shall mean the prime rate of interest quoted publicly by Standard Bank of Namibia Limited from time to time, which rate may be proved by a certificate signed by any officer of that bank, whose appointment and authority it shall not be necessary to prove, and which certificate shall constitute *prima facie* proof of the contents thereof;

- 1.1.8 "**Principal**" shall mean the person who places an Order for the provision of Agency Services, irrespective of whether the Order is placed by the person for whom Agency Services are to be rendered, or by such person's employees, servants or agents;
- 1.1.9 "**Standard Trading Terms and Conditions**" shall mean the standard trading terms and conditions recorded herein;
- 1.1.10 "**Supplier**" shall mean any person with whom TOSN transacts any business for purposes of rendering the Agency Services to the Principal, and shall include, but not be limited to: ship chandlers, vendors of all types of goods, repairers, suppliers of goods and services of whatsoever nature in respect of the Vessel, other ships' agents or brokers, importers and exporters, and port and other authorities in the Republic of Namibia;
- 1.1.11 "**TOSN**" shall mean Trade Ocean Shipping Namibia (Proprietary) Limited (registration number 2008/0226) a private company with limited liability, duly incorporated in accordance with the company laws of the Republic of Namibia
- 1.1.12 "**Vessel**" shall mean a ship owned, operated, managed or chartered by the Principal;;
- 1.2 Where applicable, the provisions of clause 1.1 shall impose substantive obligations on the Parties as provided in the provision concerned.
- 1.3 In these Standard Trading Terms and Conditions words and expressions, importing the masculine gender, shall include the feminine and neuter genders and *vice versa*; the singular shall include the plural and *vice versa*, and natural persons shall include artificial persons and *vice versa*.
- 1.4 The clause headings in these Standard Trading Terms and Conditions have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.5 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.6 No provision of these Standard Trading Terms and Conditions shall be construed against or interpreted to the disadvantage of any Party hereto by reason of such Party having, or being deemed to have, structured or drafted such provision.
- 1.7 The *eiusdem generis* rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.
- 1.8 When these Standard Trading Terms and Conditions prescribe any number of days, such days must be reckoned exclusively of the first and inclusively of the last day. If the last day falls on a day that is not a business day, it will be deemed to fall on the next business day.
- 1.9 These Standard Trading Terms and Conditions shall be governed by, construed and interpreted in accordance with the laws of the Republic of Namibia.
- 2. APPOINTMENT**
- 2.1 The Principal hereby appoints TOSN to act as its agent in the Republic of Namibia for purposes of performing the Agency Services, and TOSN hereby accepts such appointment, on these Standard Trading Terms and Conditions.
- 2.2 The Order and these Standard Trading Terms and Conditions constitute a binding agreement between the Principal and TOSN, and this Agreement shall terminate on the fulfilment of the Agency Services, unless otherwise provided for in terms hereof.
- 2.3 The Principal accepts and agrees to be bound by these Standard Trading Terms and Conditions on placing an Order with TOSN for the Agency Services.
- 3. SCOPE OF TOSN'S AUTHORITY**
- 3.1 TOSN shall provide such Agency Services as are required by the Principal in terms of the Order and TOSN may provide such additional Agency Services as TOSN in its sole and absolute discretion deems necessary, expedient and in the interests of the Principal.
- 3.2 All Agency Services provided by TOSN as contemplated by clauses 3.1, and the terms and conditions upon which such Agency Services are provided, shall, at all times, be deemed to have been specifically authorised and approved by the Principal.
- 3.3 The Principal's instructions to TOSN shall be precise, unambiguous and comprehensive in all respects. Instructions given by the Principal to TOSN shall be recognised by TOSN as valid only if given timeously and in writing. Oral, standing and general instructions and instructions which are not given timeously, even if such instructions are received by TOSN without comment, shall not, in any way, be binding upon TOSN, provided that TOSN may act on such instructions as TOSN, in its sole and absolute discretion, deems fit.
- 3.4 Notwithstanding anything to the contrary contained in these Standard Trading Terms and Conditions, if at any time TOSN considers it to be in the Principal's interests, or in the public interest, to depart from any of the Principal's instructions (or any part thereof), TOSN shall be entitled, insofar as such departure is reasonable, to depart therefrom and shall not incur any liability in consequence of doing so.
- 3.5 TOSN shall be entitled to engage the services of a Supplier to perform the Agency Services (or any part

thereof) and any such Supplier shall be deemed to be an independent contractor appointed by the Principal, and not a servant of TOSN.

4. **DURATION**

The agreement recorded in these Standard Trading Terms and Conditions shall commence on the date of acceptance of the Order by TOSN and shall, unless terminated earlier in accordance with the provisions of clauses 15 or 17, endure indefinitely.

5. **REMUNERATION OF TOSN**

5.1 **Fees**

5.1.1 The Principal shall pay to TOSN the fees agreed in writing between TOSN and the Principal for the Agency Services rendered by TOSN. In the event of there being no written agreement as to fees, or in the event of a particular Agency Service not being provided for in the scale of agreed fees, the Principal shall pay to TOSN the fees contained in the Association of Ship's Agents and Brokers of Southern Africa's scale of recommended fees payable at ports within the Republic of Namibia, as amended from time to time.

5.1.2 The Principal shall be liable for, and shall pay to TOSN, all costs and expenses incurred by TOSN, including the fees referred to in clauses 5.1.1, in providing the Agency Services at the request or on the instruction of the Principal itself, the master of the Vessel, the office of the Principal or its agents, nominees, representatives or servants, howsoever communicated to TOSN and notwithstanding the fact that any such persons may have exceeded their authority in requesting or instructing the provision of the Agency Services.

5.1.3 The Principal shall reimburse TOSN for all costs and expenses incurred by TOSN in respect of the receipt of currency from the Principal, or the remittance of currency to, or on behalf of, the Principal.

5.1.4 TOSN shall be entitled to withhold performance of the Agency Services for as long as the Principal is in default of the provisions of these Standard Trading Terms and Conditions.

5.2 **Disbursements**

5.2.1 TOSN shall not be obliged to make any disbursement whatsoever on behalf of the Principal until such time as:

5.2.1.1 TOSN has been paid all amounts then due by the Principal to TOSN in respect of the provision of the Agency Services by TOSN; and

5.2.1.2 TOSN has received sufficient funds for purposes of paying the particular disbursement;

and shall not be in default of its obligations by failing to make such payment.

5.3 **Security**

TOSN may, at any time, require the Principal to furnish security for the payment of such amounts as are, or will become, due to TOSN by the Principal in connection with the performance of the Agency Services, and for the due reimbursement of disbursements made, or to be made, by TOSN on behalf of the Principal.

5.4 **Joint and Several Liability**

In the event of TOSN providing Agency Services at the request of both the owner and the charterer of a Vessel, the owner and charterer shall incur joint and several liability in respect of the remuneration of TOSN as contemplated by this clause 5 on the basis set out in clause 5.1.1. Similarly, if any charter party applicable to the Vessel provides that the agent appointed by the charterer of the Vessel is the Vessel's agent, the charterer and the owner of the Vessel shall be jointly and severally liable to TOSN for the payment of TOSN'S fees and any costs and expenses incurred by TOSN on their behalf, as if each of them were a Principal under these Standard Trading Terms and Conditions, and TOSN shall be entitled to claim from either the charterer or the owner or both, as TOSN, in its sole and absolute discretion, deems fit.

5.5 **Credit Facilities**

TOSN reserves the right, at any time, to summarily cancel any credit facilities granted to the Principal pursuant to the performance of the Agency Services. In the event of TOSN exercising its rights in terms of this clause 5.5, all amounts then due and owing to TOSN by the Principal shall immediately become due and payable on demand.

6. **PAYMENT BY PRINCIPAL**

6.1 Unless otherwise specifically agreed between the Principal and TOSN in writing, the Principal shall pay to TOSN in cash and immediately upon presentation of account, all sums due to TOSN.

6.2 All payments made by the Principal to TOSN in terms of these Standard Trading Terms and Conditions shall be made free of set-off, bank exchange, commission or any other deduction, and the Principal shall not have the right to defer, adjust or withhold any payment due to TOSN in terms of or arising out of these Standard Trading Terms and Conditions, or to obtain deferment of judgment for such amounts or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.

6.3 All and any monies received by TOSN from the Principal shall be appropriated by TOSN, in its sole and

absolute discretion, to any indebtedness owing by the Principal to TOSN, notwithstanding that the Principal may, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.

7. QUOTATIONS

7.1 TOSN shall be entitled, at any time and on 48 (forty-eight) hours' written notice to the Principal, to cancel or resile from the Agreement in circumstances where it becomes impracticable or uneconomical for TOSN, in its sole and absolute discretion, to perform in terms of the Agreement at the quoted rate, and the Principal shall have no claim whatsoever against TOSN for any loss that the Principal may incur as a result of TOSN cancelling or resiling from the Agreement.

7.2 Without in any way limiting the provisions of clause 7.1, all quotations for Orders are subject to revision on 48 (forty-eight) hours' written notice, having regard to changes in currency exchange rates and increases in amounts payable by, or on behalf of, or at the instance of TOSN to third Parties including, without limitation: freight, surcharges, insurance premiums, equipment rental and labour charges, where such changes and increases take place after quotation. Any revision of a quotation for an Order shall be commensurate with the change in the currency exchange rate or the increase in the amounts payable (as the case may be). Any such change and/or increase shall, failing agreement between the Parties, be determined by the auditors for the time being of TOSN, or any other suitably qualified auditors nominated by TOSN, who, in such determination, shall act as experts and not as arbitrators, and whose decision shall be final and binding on the Parties.

8. GUARANTEES BY TOSN

8.1 A Principal shall under no circumstances require TOSN to furnish a guarantee or to provide security for the performance of any obligations by the Principal or TOSN on behalf of the principal.

8.2 If TOSN, by reason of legislation or the requirement of a competent authority, is obliged to guarantee or secure the fulfilment of the Principal's obligations, the Principal hereby indemnifies TOSN, in accordance with the provisions of clause 12, in respect of such guarantee or security and the Principal shall, prior to the furnishing of such guarantee or security by TOSN, pay commission to TOSN, calculated on the maximum amount of any loss TOSN may sustain where any such guarantee or security is acted upon.

9. LIABILITY OF TOSN

9.1 TOSN shall not be liable for any consequential loss and shall only be liable in respect of any direct damage or loss incurred by the Principal and/or a Supplier as a result of a default by TOSN in providing the Agency Services where:

9.1.1 such damage or loss has been caused by the wilful default or gross negligence of TOSN; and

9.1.2 such claim arises at a time when the Goods in question are in the custody of TOSN and under its control.

9.2 In the event that TOSN elects not to refer any claim by the Principal, which claim TOSN disputes, to arbitration for determination and, in the further event of the Principal failing to prosecute the claim as envisaged in Section 15(1) of the Prescription Act 68 of 1969 (as amended) within one year from the date on which the damage or loss occurred, such claim shall be deemed to have been extinguished by effluxion of time.

9.3 Any claims by TOSN against the Principal will not be subject to clause 9.2 above and the normal prescription periods of the Prescription Act 68 of 1969 (as amended) shall apply.

9.4 Notwithstanding anything to the contrary contained in these Standard Trading Terms and Conditions, the liability of TOSN to the Principal shall, at all times, be limited to payment of N\$10 000.00 (Ten Thousand Namibian Dollars) in respect of any one voyage undertaken by the Vessel.

9.5 TOSN shall under no circumstances be liable for damage to or loss of Goods delivered to it by the Principal for the purpose of forwarding, clearing or safekeeping.

9.6 TOSN shall not be responsible for any money paid or remitted by it on behalf of the Principal to any person pursuant to any request or instruction given to TOSN by the Principal, its servants, employees, agents or representatives.

9.7 All delivery dates specified in the Orders placed by the Principal ("**the Delivery Date/s**") are estimates only and TOSN shall not be responsible for any costs, expenses, losses or damages suffered by the Principal, either directly or indirectly arising where the Goods or services are not delivered by the Delivery Date. The Principal must accept or pay for Goods and services despite any delay in delivery or despatch thereof.

9.8 TOSN shall be discharged from all liability whatsoever and howsoever arising in respect of or connected with any service rendered to the Principal or which TOSN has undertaken to provide, unless summons or other process initiating legal proceedings is issued and served on TOSN within 9 (nine) months of the date upon which the incident giving rise to any such liability occurred or upon which the Agency services were or should have been rendered whichever is the earlier and immediate notice is given to TOSN in writing of such legal proceedings having been brought.

9.9 TOSN shall not be liable for the default or negligence act howsoever arising whether wilful or otherwise on the part of any Supplier providing goods or services to

a Principal at TOSN'S instance and request, such Supplier being deemed to be an independent contractor employed by the Principal.

9.10 TOSN shall not be responsible for any money paid or remitted by TOSN on behalf of a Principal to any persons pursuant to any request or instruction given by TOSN by a Principal.

9.11 TOSN shall not be liable for any loss or damage whatsoever nature sustained by a Principal directly or indirectly attributed to war, danger of war, riots, labour strikes, slowdown strikes, lockouts, boycotts, sabotage, overburdening of any port, any circumstances beyond the control of TOSN and the like, which may affect or interrupt the regular and normal conduct of trade. In the event of TOSN being precluded from providing Agency services due to any such circumstances beyond its control or to any other circumstances constituting *force majeure* TOSN shall nevertheless be entitled to be reimbursed by the Principal for costs and expenses incurred by TOSN in taking all such steps as may be necessary to protect the interest of the Principal, in particular shed hire and/or storage charges paid by TOSN at the applicable tariff rates.

10. INSURANCE

10.1 Should the Principal require insurance against damage or loss where TOSN'S liability for such damage and/or loss is excluded by these Standard Trading Terms and Conditions, TOSN shall procure such insurance for the Principal, on the Principal's behalf and at the Principal's expense, provided that the Principal's request for such insurance is made in writing and an insurance cover note is issued and taken up by the Principal prior to the delivery of the Agency Services.

10.2 Notwithstanding TOSN'S compliance with any request made under clause 10.1, TOSN shall under no circumstances be liable for any errors or omissions on its part in arranging such insurance on behalf of the Principal.

11. WARRANTIES AND REPRESENTATIONS BY TOSN

TOSN makes no warranties and representations to the Principal save as may be specifically provided herein, or as notified in writing by TOSN to the Principal, from time to time. The Principal acknowledges that TOSN is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, warranty or inducement which may have been made at any time by any employee, representative or any person acting, or purporting to act, for and on behalf of TOSN, whether negligently or otherwise, unless such statement, representation, guarantee, promise, undertaking, warranty or inducement is supplied or made in writing by an employee of TOSN, duly authorised by written resolution of the board of directors of TOSN, in response to a written enquiry specifying accurately and in complete detail what information is required.

12. INDEMNITIES BY PRINCIPAL

12.1 Without prejudice to any rights TOSN may have under these Standard Trading Terms and Conditions or otherwise in law, the Principal hereby indemnifies and holds TOSN, its servants, agents, representatives and nominees harmless against all liabilities, damages, costs and expenses of whatsoever nature incurred or suffered by TOSN arising, directly or indirectly, from or in connection with the provision of the Agency Services and, in particular, but without limitation, in respect of any liability whatsoever which may be incurred by reason of:

12.1.1 claims by a Supplier in respect of any Goods provided to the Principal at TOSN'S instance and request in accordance with clause 3.5;

12.1.2 payment of any taxation which may be levied on passenger earnings or freight earned on cargo loaded in the absence of reciprocal intergovernmental taxation agreements;

12.1.3 payment of any costs and expenses incurred by TOSN in the performance of the Agency Services;

12.1.4 any claims arising out of a guarantee furnished by TOSN pursuant to the provisions of clause 8; and/or

12.1.5 any claims arising out of a breach of clause 13 by the Principal.

12.2 The Principal hereby undertakes, at any time prior to, during or after the provision of the Agency Services and on receipt of a written request from TOSN, to place TOSN in sufficient funds, or to furnish TOSN with security to the satisfaction of TOSN, in order to ensure the due fulfilment by the Principal of its obligations under the indemnity contained in clause 12.1.

13. WARRANTIES BY PRINCIPAL

13.1 The Principal warrants that:

13.1.1 it is either the owner, or the authorised agent of the owner, of any Goods in respect of which the Principal instructs TOSN, and that each such person is bound by these Standard Trading Terms and Conditions and accepts that TOSN shall have the right to enforce against any such persons, jointly and severally, any liability of the Principal under these Standard Trading Terms and Conditions, or to recover from any such persons any sums to be paid by the Principal to TOSN which, upon proper demand, have not been paid;

13.1.2 all information and instructions supplied, and to be supplied, by it to TOSN are and shall, at all times, be accurate, true and comprehensive and, in particular, without derogating from the generality of the

aforegoing, the Principal shall be deemed to be bound by and warrants the accuracy of all descriptions, values and other particulars furnished to TOSN for customs, consular and other purposes, and the Principal warrants further that it will not withhold any necessary or pertinent information from TOSN, and indemnifies TOSN against all claims, losses, penalties, damages, expenses and fines whatsoever, whenever and howsoever arising as a result of a breach by the Principal of the warranties contained in this clause 13; and

13.1.3 all Goods will be properly, adequately and appropriately prepared, packed, stowed, labelled and marked, having regard, *inter alia*, to the implementation by or on behalf of TOSN of the agreement between TOSN and the Principal in respect of the Goods concerned, and the characteristics of the Goods concerned shall be capable of withstanding the normal hazards inherent in the implementation of such agreement and shall comply with all legislative requirements.

13.2 The Principal agrees that each of the warranties referred to in this clause 13 shall be deemed to be a representation of fact inducing TOSN to enter into these Standard Trading Terms and Conditions unless the contrary is proved, and that each of the warranties referred to in this clause 13 shall be assumed to be a material warranty unless the contrary is proved.

13.3 All matters referred to in this clause 13, save where the context clearly indicates the contrary, are and shall be warranted as such for the duration of these Standard Trading Terms and Conditions.

14. **AGENT'S LIEN**

All Goods and documentation pertaining thereto, including, without limitation, bills of lading and import permits, as well as all refunds, repayments, claims and other recoveries or currency received by TOSN from, or on behalf of, the Principal, shall be held by TOSN subject to a general lien and right of retention *in lieu* of any monies due to TOSN by the Principal for any reason whatsoever. If the general lien is not satisfied within 14 (fourteen) days of written notice of the exercise of such lien having been given to the Principal by TOSN, or should the Agreement be terminated without TOSN having been paid all amounts owing to it by the Principal:

14.1 the Goods may be sold by auction or otherwise and the proceeds of the sale applied to the satisfaction of the lien and expenses incurred in respect of the sale; and

14.2 TOSN shall be entitled to set off and to deduct any amount owing to it by the Principal from the amount of the proceeds held by it as a result of the sale.

15. **FORCE MAJEURE**

15.1 If any Party to these Standard Trading Terms and Conditions is prevented or restricted, directly or indirectly, from carrying out all or any of its obligations under these Standard Trading Terms and Conditions by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of that Party, the Party so affected shall be relieved of its obligations under these Standard Trading Terms and Conditions during the period that such event and its consequences continue, but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or any loss or damages, whether general, special or consequential, which the other Party may suffer due to or resulting from such delay or failure, provided always that written notice shall forthwith be given of any such inability to perform by the affected Party.

15.2 Any Party invoking *force majeure* in accordance with this clause 15 shall upon termination of an event giving rise thereto, forthwith give written notice of such cessation to the other Party. If such *force majeure* continues for a period of more than 90 (ninety) days, then either Party shall be entitled forthwith to cancel these Standard Trading Terms and Conditions in respect of any obligations still to be performed hereunder, and neither Party shall have any claim against the other.

16. **BREACH**

16.1 If either Party to these Standard Trading Terms and Conditions:

16.1.1 breaches any of the provisions of this Agreement and, where such breach is capable of remedy, the defaulting Party fails to remedy the breach for a period of 10 (ten) days after receipt of notice from the aggrieved Party calling upon the defaulting Party to remedy its breach;

16.1.2 commits any other breach of the terms of this Agreement which is incapable of being remedied;

16.1.3 takes steps or has steps taken against it for its winding-up, sequestration or liquidation (whether voluntary or otherwise), or commits any act of insolvency in terms of the Insolvency Act 24 of 1936 (as amended);

16.1.4 being a company or close corporation, ceases to be controlled by the person(s) that control(s) it at the date of commencement of these Standard Trading Terms and Conditions as contemplated in clause 4; and/or

16.1.5 fails to contest or discharge any final judgment taken against it in any court of competent jurisdiction for a period of 10 (ten) days or longer; and/or

16.1.6 ceases to carry on business for any reason whatsoever;

then such defaulting Party shall be deemed to be in breach of its obligations in terms of these Standard Trading Terms and Conditions.

16.2 If either Party is in breach of these Standard Trading Terms and Conditions, or is deemed to be in breach of these Standard Trading Terms and Conditions in terms of clause 16.1, and provided the aggrieved Party has given the defaulting Party written notice to remedy such breach and the defaulting Party fails to timeously remedy such breach after receiving such written notice, the aggrieved Party shall be entitled, but not obliged, in addition to any other rights which it may have or remedies which may be available to it in terms of these Standard Trading Terms and Conditions or otherwise in law, to –

16.2.1 cancel these Standard Trading Terms and Conditions forthwith, with or without claiming damages;

16.2.2 obtain an order against the defaulting Party for specific performance, with or without claiming damages; and/or

16.2.3 claim such damages as it may have suffered in lieu of specific performance, together with all amounts owing under, or in terms of these Standard Trading Terms and Conditions, whether or not such amounts have become due for payment.

17. **TERMINATION FOR CONVENIENCE**

Either Party shall, in its sole and absolute discretion, be entitled, at any time, to terminate this Agreement on 60 (sixty) days' written notice to the other Party.

18. **DOMICILIUM**

18.1 The Principal shall give written notice to TOSN of the Principal's *domicilium citandi et executandi*, which shall not be a *poste restante*, in the Republic of Namibia, and at which *domicilium citandi et executandi* all processes and notices arising out of or in connection with these Standard Trading Terms and Conditions or a breach or termination thereof may be validly served upon and delivered to the Principal. In the absence of such written notice from the Principal, the Principal hereby chooses its *domicilium citandi et executandi* as the address specified by it in the Order, if any.

18.2 The Principal may, by notice in writing to TOSN, change its *domicilium citandi et executandi*.

18.3 Notwithstanding anything to the contrary contained in this clause 18, a written notice or communication actually received by the Principal from TOSN, shall be

adequate written notice or communication to the Principal.

19. **ARBITRATION**

19.1 Subject to clause 19.2, in the event of any dispute of whatsoever nature arising between the Parties in relation to any matter provided for in, or arising out of these Standard Trading Terms and Conditions, then that dispute shall, at the election of TOSN, which election shall be communicated to the Principal in writing, be referred to arbitration to be held at Walvis Bay. Should TOSN elect that the dispute be referred to arbitration, such dispute shall be referred to a single arbitrator to be agreed upon by the Parties to the dispute or, failing such agreement, to be nominated by the president for the time being of the Law Society of the Republic of Namibia, and such arbitration shall be conducted in accordance with and subject to the provisions of the Namibian Arbitration Act No. 42 of 1965 (as amended), or any statutory modification or re-enactment thereof for the time being in force or such rules as the Parties may agree to, in writing.

19.2 The provisions of clause 19.1 shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

20. **JURISDICTION**

20.1 The Principal hereby submits to the jurisdiction of the Magistrate's Court in respect of any action that TOSN may institute against the principal. This consent is given in terms of Section 45 of the Magistrate's Court Act No. 32 of 1946 as amended.

20.2 Irrespective of clause 20.1 above, TOSN shall always be entitled to proceed with litigation in the High Court of Namibia.

21. **MISCELLANEOUS**

21.1 **ISPS (International Ship and Port Facility Security Code)**

TOSN will exercise reasonable skill and care to file the data required for purposes of ISPS correctly and within the prescribed filing deadlines. TOSN shall not be responsible or liable for the correctness or accuracy of the information provided by the Vessel or any failure by the Vessel to provide the data in a timely manner nor for any technical problems or human error beyond TOSN'S control. TOSN will provide the filing process as a data exchange service only. TOSN shall bear no liability of whatsoever nature irrespective of any alleged negligence or fault on the part of TOSN, arising from the filing of data or omission to file data timeously or at all and liability therefor shall rest exclusively with the Vessel. The Principal hereby indemnifies and holds TOSN harmless in respect thereof.

21.2 **Payment and Interest**

Save to the extent otherwise provided, all amounts due

by one Party to the other (including damages) in terms of or arising out of these Standard Trading Terms and Conditions shall, unless paid on due date, bear interest from the due date to date of payment. Such interest shall be:

21.2.1 calculated at the Prime Rate plus 6% (six *per centum*); and

21.2.2 capitalised monthly in arrears on the balance due.

21.3 **Implementation and Good Faith**

21.3.1 The Parties to these Standard Trading Terms and Conditions undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give or conducive to giving effect to the terms, conditions and import of these Standard Trading Terms and Conditions.

21.3.2 The Parties shall at all times during the continuance of these Standard Trading Terms and Conditions observe the principles of good faith towards one another in the performance of their obligations in terms of these Standard Trading Terms and Conditions. This implies, without limiting the generality of the foregoing, that they:

21.3.2.1 will at all times during the term of these Standard Trading Terms and Conditions act reasonably, honestly and in good faith;

21.3.2.2 will perform their obligations arising from these Standard Trading Terms and Conditions diligently and with reasonable care; and

21.3.2.3 will make full disclosure to each other of any matter that may affect the execution of these Standard Trading Terms and Conditions.

21.4 **Severability**

If any provision of these Standard Trading Terms and Conditions is unenforceable, then the company shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these Standard Trading terms and Conditions which shall not be affected and shall be of full force and effect.

21.5 **Variation**

No variation or alteration of these Standard Trading Terms and Conditions shall be binding on TOSN unless embodied in a written document signed by a duly authorised director of TOSN. Any purported variation or alteration of these Standard Trading Terms and Conditions otherwise than as set out herein shall be of no force or effect, whether such purported variation or alteration is written or oral, or takes place before or after the receipt of these Standard Trading Terms and Conditions by the Principal.

21.6 **Relaxation**

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other in respect of the performance of any obligation hereunder, or the enforcement of any right arising from these Standard Trading Terms and Conditions, and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party, or operate as a waiver or a novation of, or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

21.7 **Time Of The Essence**

Time is of the essence for the performance by the Principal of all obligations owed to TOSN in terms of this Agreement.

21.8 **Non-Assignment**

The Principal shall not be entitled to assign any of its rights and obligations under these Standard Trading Terms and Conditions without the express prior written consent of TOSN, which consent TOSN may, in its sole and absolute discretion, withhold or withdraw.

21.9 **Costs**

All costs (which shall include legal costs on the attorney and own client scale), incurred by an aggrieved Party which enjoys success, or substantial success, in enforcing its rights (whether action has been instituted or not) arising out of a breach of these Standard Trading Terms and Conditions by the other Party hereto shall be borne by that other Party.

21.10 **Applicable law**

Any question regarding the effect or interpretation of these Standard Trading Terms and conditions or any part thereof shall be determined in the Republic of Namibia at the port or city in which or nearest to the place where the circumstances giving rise to the dispute occurred, in accordance with the laws in force in the Republic of Namibia.