

# Terms and Conditions

## NMTS – OSB – IMS

### Article 1. Applicability

- 1.1 These Terms and Conditions apply to all Services rendered by NMTS/OSB/IMS, to any Agreement between NMTS/OSB/IMS and the Customer and to all matters relating thereto, in the widest sense of the words.
- 1.2 The Customer and any Third Party acknowledges and agrees that it has received and understands these Terms and Conditions and agrees to be bound by them.
- 1.3 NMTS/OSB/IMS may, at any time and from time to time, modify, alter or vary these Terms and Conditions.
- 1.4 Board members/directors/managers/officers/employees/servants/agents and/or staff, (other) subordinates of NMTS/OSB/IMS and/or third parties engaged by NMTS/OSB/IMS may also invoke these Terms and Conditions as if such provision was made expressly for the aforementioned persons/entities.
- 1.5 NMTS/OSB/IMS shall not be bound by any standard terms and/or conditions of the Customer, any Third Party or by any other terms proposed by a Customer which is in conflict with these Terms and Conditions.
- 1.6 All the rights, indemnities and limitations of liability contained in these Terms and Conditions shall continue to have their full force and effect in all the circumstances notwithstanding termination of the Agreement.

### Article 2. Definitions

- 2.1 **Agreement** means any agreement whether verbal or in writing between NMTS/OSB/IMS and the Customer.
- 2.2 **Charges** means NMTS/OSB/IMS's fees for the Services (to be) rendered to the Customer and any and all other fees, charges, expenses and Taxes to be paid by the Customer.
- 2.3 **Customer** means every natural or legal person for whom NMTS/OSB/IMS is rendering Services. Should NMTS/OSB/IMS be appointed by a charterer, manager, carrier or master both the charterer/manager/carrier/master and ship owner are to be regarded as Customer and are liable vis-à-vis NMTS/OSB/IMS under these Terms and Conditions.
- 2.4 **Goods** means all goods of the Customer or goods belonging to third parties carried by the Customer, including but not limited to the packages containing those goods and shipping or (transport) containers.
- 2.5 **Government Authorities** means all government authorities including but not limited to the Port Authorities, the harbor master and government departments with responsibility for the import and export of goods, the collection of revenue on the import and export of goods and the transport of those goods.
- 2.6 **IMS** means International Maritime Services B.V.
- 2.7 **NMTS** means Nautical Marine Trading & Services B.V.
- 2.8 **OSB** means Offshore Support Base B.V.
- 2.9 **NMTS/OSB/IMS** means NMTS, OSB and/or IMS.
- 2.10 **Services** means all services performed by NMTS/OSB/IMS including but not limited to: (agency services with respect to) crew management, ship and project management; customs clearance (import/export); port agency; (small) repairs vessels; husbandry services; assistance lay-up vessels; handling, temporary storage, carriage and transportation of goods.
- 2.11 **Taxes** means any (unforeseen) tax, taxation, levy, due, charge (to be) imposed by Government Authorities with respect to (the vessel of) the Customer and/or the Services (to be) rendered for the Customer.
- 2.12 **Third Party/Parties** means all those persons, who are not employees with whom NMTS/OSB/IMS has an undertaking on behalf of the Customer, irrespective of whether NMTS/OSB/IMS has the undertaking in its own name or in the name of the Customer.

### Article 3. Contractual Capacity

- 3.1 Unless explicitly agreed to the contrary, NMTS/OSB/IMS acts as agent for the account and on behalf of the Customer.
- 3.2 Subject to and in accordance with these Terms and Conditions, NMTS/OSB/IMS agrees and the Customer hereby authorizes NMTS/OSB/IMS to contract and intermediate as agent on behalf of the Customer with any relevant third party within the performance of all or any part of the Services.
- 3.3 These Terms and Conditions apply to the Customer and to any Third Party irrespective whether NMTS/OSB/IMS is acting in its own name or in the name of the Customer.

### Article 4. Execution of the Agreement

- 4.1 All offers made by NMTS/OSB/IMS are non-binding.
- 4.2 Agreements, as well as amendments of and additions to these Agreements, shall only become effective if and insofar (i) as NMTS/OSB/IMS has confirmed these in writing or (ii) NMTS/OSB/IMS has started to perform the Services.
- 4.3 NMTS/OSB/IMS shall:
  - (a) undertake the Services with reasonable care and diligence in the performance of the duties;
  - (b) provide the Services in compliance with applicable laws and regulations; and
  - (c) undertake the Services in compliance with ethical standards including: (i) not offer, agree or give any person working for or engaged by another party any gift or other consideration which gift or other consideration may act as an inducement or a reward for any act or omissions to act in connection with the Agreement; and (ii) not pay or promise to pay directly or indirectly anything of value to a public official or Government Authority in connection with the Agreement and NMTS/OSB/IMS shall notify the Customer in writing in the event that a request is received from a public official or Government Authority regarding illicit payments.
- 4.4 Information and communications regarding the Services shall be given and made by NMTS/OSB/IMS to the best of its knowledge and ability, but it shall not be responsible for their correctness.
- 4.5 The mere statement by the Customer of a time for delivery or completion shall not legally bind NMTS/OSB/IMS. Arrival times are not strict deadlines and are not guaranteed by NMTS/OSB/IMS.
- 4.6 NMTS/OSB/IMS shall be entitled, but not obliged, on its own authority and at the Customer's expense and risk, to take all such actions as it deems necessary in the Customer's interest. Where possible, NMTS/OSB/IMS shall consult in advance with the Customer. If this is not possible, NMTS/OSB/IMS shall take such measures and shall inform the Customer of the measures taken and the associated costs, as soon as this is reasonably possible.

### Article 5. Liability

- 5.1 All Services shall be at the Customer's expense and risk.
- 5.2 NMTS/OSB/IMS is not liable for any damages and/or losses, unless the Customer proves that the damages and/or losses in question have been caused by willful misconduct or gross negligence of NMTS/OSB/IMS.
- 5.3 The damages and losses to be paid by NMTS/OSB/IMS shall in all cases be limited to and shall not in any circumstances exceed the amount equal to the remuneration that NMTS/OSB/IMS would be entitled to in the event NMTS/OSB/IMS had properly performed the Service during which the damages and/or losses occurred.
- 5.4 NMTS/OSB/IMS shall never be liable for indirect or consequential loss, lost profits and immaterial damage, however that occurred.
- 5.5 The Customer shall be liable vis-a-vis NMTS/OSB/IMS for any damage - including but not limited to material and immaterial damage, consequential damage, fines, interest, as well as penalties and confiscation, including damage on account of non-clearance or tardy clearance of customs documents and claims due to product liability and/or intellectual property rights – suffered directly or indirectly by NMTS/OSB/IMS as a result of (amongst other things) the non-compliance by the Customer of any obligation pursuant to the Agreement or pursuant to applicable national and/or international legislation, as a result of any incident that is within the control of the Customer, as well as a result of the fault or negligence in general of the Customer and/or its employees and/or Third Parties whose services the Customer engages and/or Third Parties that work on behalf of the Customer.
- 5.6 The Customer shall indemnify NMTS/OSB/IMS at all times against third-party claims, including employees of both NMTS/OSB/IMS and the Customer, connected with or ensuing from the damage referred to in the previous paragraph.
- 5.7 If a claim is made against NMTS/OSB/IMS by the Customer outside of the Agreement in respect of the damage that occurs during the execution of the Services, then NMTS/OSB/IMS's liability shall be limited to the liability under the Agreement.
- 5.8 If to defend its liability for conduct of a Third Party or employee NMTS/OSB/IMS derives a defence from the Agreement vis-a-vis the Customer, then if it is held liable by the Customer under this defence, a Third Party or employee can invoke this defence as if the Third Party or employee were also party to the Agreement.
- 5.9 Any claim against NMTS/OSB/IMS shall become time barred after 9 months have passed and shall become extinct after 18 months have passed, these periods to be determined as of the date of the final day of the occurrence that gave rise to the claim.
- 5.10 All the provisions also apply fully to any Third Party in a way that where the provisions read Customer, it should be read "Third Party".



## Article 6. Written Instructions

- 6.1 Wherever instructions to be given to NMTS/OSB/IMS are necessary, such instructions will be valid only if given in writing, acknowledged by NMTS/OSB/IMS in writing and given in sufficient time in all the circumstances for NMTS/OSB/IMS reasonably to be able to adopt the instructions. Standing or general instructions, or instructions given late, even if received by NMTS/OSB/IMS without comment, shall not be binding upon NMTS/OSB/IMS.
- 6.2 The risk of mutilation of any communication or interruption of the transmission of communications through the use of the postal service, radio, telephone, telex, facsimile, telegraph and e-mails shall be for the account of the Customer.

## Article 7. Third Parties

- 7.1 NMTS/OSB/IMS reserves complete freedom (i) to decide the manner or procedure to be adopted for any or all of the various acts which will be necessary for the completion of the Services, (ii) to engage and sub-contract third parties to perform all or any of the acts required of NMTS/OSB/IMS and (iii) to accept the (general) terms and conditions of those third parties at the Customer's expense and risk. NMTS/OSB/IMS shall then also be entitled though not obliged to rely on those conditions vis-à-vis the Customer.
- 7.2 NMTS/OSB/IMS expressly disclaims all warranties and representations that third party services will meet specific requirements, that the third party services will be uninterrupted, completely secure or free of errors. The Customer acknowledges and agrees that third party services are provided on an "as is" basis without any warranty of any kind by NMTS/OSB/IMS and that the entire risk as to the quality and performance of the third party services shall be borne by the Customer.
- 7.3 All claims in connection with the act(s) and/or omission(s) of a third party shall be brought solely against such party and not against NMTS/OSB/IMS.

## Article 8. Customer Warranties

- 8.1 The Customer guarantees:
- (a) that it will timely provide all documentation, information and assistance required by NMTS/OSB/IMS to perform the agreed Services;
  - (b) that the documentation and information that it provides are correct and complete;
  - (c) that all Goods and instructions of the Customer are in compliance with all applicable laws and regulations;
  - (d) that all Goods are delivered to NMTS/OSB/IMS or a third party in suitable packaging to the agreed location, at the agreed time and in the manner agreed;
  - (e) it will promptly notify NMTS/OSB/IMS of any issue or event that may affect NMTS/OSB/IMS's ability to perform the Services or that NMTS/OSB/IMS should be aware of;
  - (f) it will provide NMTS/OSB/IMS with any necessary sums of money for the (advance) payment of any disbursements or any additional costs incurred by NMTS/OSB/IMS in providing the Services immediately upon demand; and
  - (g) it will comply with ethical maritime standards which shall include:
    - (i) the Customer shall not offer, agree or give any person working for or engaged by another party any gift or other consideration which gift or other consideration may act as an inducement or a reward for any act or omissions to act in connection with the Agreement; and
    - (ii) the Customer shall not offer pay or promise to pay directly or indirectly anything of value to a public official or Government Authority in connection with the Agreement and the Customer shall notify NMTS/OSB/IMS in writing in the event that a request is received from a public official or Government Authority requesting illicit payments; and
    - (iii) the Customer shall not take any other action which shall result in a breach by either party of any applicable anti-corruption legislation.
- 8.2 The Customer acknowledges that a breach or failure to observe all or any of the guarantees in this clause could lead to penalties or damages to the Customer and also to NMTS/OSB/IMS and the Customer shall indemnify and hold NMTS/OSB/IMS harmless for any such penalties and/or damages.

## Article 9. Customer Indemnities

- 9.1 The Customer shall indemnify and hold NMTS/OSB/IMS harmless:
- (a) from and against any (additional) costs incurred, charges and/or Taxes against the Customer or against NMTS/OSB/IMS associated with (Services rendered in favor of) the Customer and/or the Goods;
  - (b) from and against any (alleged) penalties and liabilities associated with (a failure by) the Customer, the Services rendered and/or the (transport of the) Goods;
  - (c) from and against damages payable by NMTS/OSB/IMS arising from errors or misrepresentations by the Customer;

(d) from and against losses or damages incurred by NMTS/OSB/IMS due to a breach by the Customer of any provisions in the Agreement or in these Terms and Conditions; and

(e) any loss on exchange in respect of moneys which NMTS/OSB/IMS has in his keeping funds on behalf of the Customer or which NMTS/OSB/IMS is to collect or pay on the Customer's behalf.

- 9.2 The Customer agrees to pay any amounts claimed in respect of the indemnity in this clause within seven (7) days of demand by NMTS/OSB/IMS.
- 9.3 The nature of the indemnity provided pursuant to this clause shall include, without limitation, all penalties, liabilities and damages assessed against officers, employees and (sub)contractors of NMTS/OSB/IMS, together with all legal costs incurred (calculated on a solicitor/client basis).
- 9.4 The indemnity shall continue in full force and effect and shall not be affected in any way if by the negligence or the alleged negligence or any default, omission, neglect or default or any breach of duty of obligation of NMTS/OSB/IMS, its officers or its employees.

## Article 10. Remunerations

- 10.1 All prices quoted shall be based on the prices that apply at the time of the offer (quotation). If between the time of the offer and the time of execution of the Agreement, one or more of the cost factors (including fees, wages, the cost of social measures and/or laws, freight prices and exchange rates, etc.) increase, NMTS/OSB/IMS is entitled to pass on this increase to the Customer.
- 10.2 Unless provided otherwise, all-in or fixed rates shall not include at any rate: duties, Taxes and levies, consular and attestation fees, costs of preparing bank guarantees and insurance premiums.
- 10.3 In the event of circumstances that are of such a nature that when concluding the Agreement it was not deemed necessary to take into account the risk that they could occur, that cannot be attributed to NMTS/OSB/IMS and that significantly increase the costs of the Services being performed, NMTS/OSB/IMS is entitled to an additional payment. Where possible, NMTS/OSB/IMS shall consult in advance with the Customer. In such a case, the additional payment shall consist of the additional costs that NMTS/OSB/IMS has had to incur in order to perform the Services, plus an additional payment - deemed fair and equitable - for the services to be performed by NMTS/OSB/IMS.
- 10.4 Expenses of an exceptional nature and higher wages arising whenever Third Parties, by virtue of any provision in the relevant agreements between NMTS/OSB/IMS and Third Parties, load or unload Goods in the evening, at night, on Saturdays or on Sundays or public holidays in the country where the Service is being carried out, shall not be included in the agreed prices, unless specifically stated. Any such costs shall therefore be remunerated by the Customer to NMTS/OSB/IMS.
- 10.5 Other than in cases of intent or deliberate recklessness on the part of NMTS/OSB/IMS, in the event of the loading and/or unloading time being inadequate, all costs resulting therefrom, such as demurrage, waiting times, etc. shall be borne by the Customer, even when NMTS/OSB/IMS has accepted the bill of lading and/or the charter party from which the additional costs arise without protestation.

## Article 11. Terms of Payment

- 11.1 The Customer shall be obliged to pay all Charges due and payable in the manner specified in the Agreement and if none such is specified then:
- (a) the Customer shall be required to pay NMTS/OSB/IMS the full amount specified in any advance invoice immediately upon demand by NMTS/OSB/IMS; and
  - (b) the Customer shall be required to pay NMTS/OSB/IMS the full amount specified in any invoice within fifteen (15) days as of the date of the invoice.
- 11.2 The Customer shall pay the invoices received from NMTS/OSB/IMS without any suspension, retention, set-off (statutory or otherwise), deduction, counterclaim or discount and notwithstanding the existence of any claim or dispute in respect of the Services.
- 11.3 NMTS/OSB/IMS shall not provide the Services to the Customer unless any and all sums due are paid by the Customer to NMTS/OSB/IMS.
- 11.4 Notwithstanding the other terms in this clause and or the Agreement, NMTS/OSB/IMS is at liberty to demand immediate payment, payment beforehand or security from the Customer as in his discretion may deem proper.
- 11.5 NMTS/OSB/IMS reserves the right to offset any amounts receivable from the Customer against any amounts payable to that Customer or any company affiliated with the Customer. This right exists irrespective of the date the liability has been created or debt incurred with NMTS/OSB/IMS.



- 11.6 Failing timely payment the Customer is in default without separate summons or notice. Furthermore, the Customer shall then be owing: (a) a penalty of 10% over the (invoice) amount outstanding; (b) the statutory rate of interest; and (c) all collection costs including but not limited to the full attorney's and/or bailiffs fees and disbursements.
- 11.7 In the event that the Customer, after having been summoned by or on behalf of NMTS/OSB/IMS, remains in default with paying the sums due, then NMTS/OSB/IMS is at liberty to secure and enforce compliance by the Customer by all means including but not limited to attaching assets of the Goods and/or arresting the vessel to which the relevant Services were rendered.
- 11.8 For any claims that NMTS/OSB/IMS may have against the Customer from any cause whatsoever and whether or not related to a previous order, NMTS/OSB/IMS shall have (i) a right of retention in respect of anything of the Customer (including but not limited to Goods and documents) that NMTS/OSB/IMS has or shall have under his control irrespective of to whom it belongs and (ii) a right of lien on anything of the Customer (including but not limited to Goods, documents, funds). NMTS/OSB/IMS may sell such Goods, documents or anything else publicly or privately.

**Article 12. Taxes**

- 12.1 The Customer is responsible for the payment of any Taxes.
- 12.2 If the Customer defaults in the payment on the due date of any Taxes payable then without prejudice to any other remedies of NMTS/OSB/IMS and upon demand by NMTS/OSB/IMS, the Customer shall pay to NMTS/OSB/IMS an amount equal to the amount of any Taxes or claims that may become payable by NMTS/OSB/IMS due to the default of the Customer.

**Article 13. Confidentiality**

- 13.1 NMTS/OSB/IMS and the Customer agree to keep confidential and not to disclose any information regarding the other party's business, without the prior written consent of the other party except: (a) if the information was public knowledge at the moment of the disclosure; (b) if the information becomes public knowledge other than by breach of this clause; or (c) if the disclosure is required pursuant to any laws or regulations which the disclosing party is subject to.
- 13.2 Notwithstanding the above, NMTS/OSB/IMS and the Customer shall be entitled to disclose confidential information to any officer, employee, servant, agent or contractor or sub-contractor of that party which require knowledge for the purpose of the Services.

**Article 14. Termination**

- 14.1 NMTS/OSB/IMS shall be entitled to terminate any Agreement with immediate effect and without liability by giving notice to the Customer if: (a) the Customer commits any breach of any term of the Agreement and/or these Terms and Conditions; or (b) the Customer is declared bankrupt, becomes insolvent or is unable to pay debts as they fall due.
- 14.2 In the event of termination or dissolution of the Agreement, all claims of NMTS/OSB/IMS - including future claims - shall be due and payable forthwith and in full.
- 14.3 If the Agreement is terminated pursuant to clause 14.1 above the Customer shall be liable to NMTS/OSB/IMS for any damages suffered by NMTS/OSB/IMS as a result of the termination and the cause thereof and pay NMTS/OSB/IMS all fees earned and recoverable costs incurred in respect of the Services performed up to the date of the termination together with any further reasonable costs and/or expenses incurred by NMTS/OSB/IMS as a result of the termination.
- 14.4 The Customer shall be entitled to terminate any Agreement by giving written notice to NMTS/OSB/IMS if NMTS/OSB/IMS is declared bankrupt or is unable to pay debts as they fall due.

**Article 15. Force Majeure**

- 15.1 Neither NMTS/OSB/IMS or the Customer shall be liable to the other in damages or have the right to terminate an Agreement for any failure to perform or delay in performance of its obligations if and in so far as and for so long as such performance is delayed or prevented by the other's acts or omissions, or by circumstances beyond its reasonable control including but not limited to Government restrictions, Port Authorities and security restrictions in Ports, strikes, lock-outs or labor disputes of any kind, fire, flood, hurricane, storm, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, insurrection, war or civil war, adverse weather conditions or prolonged power failure.
- 15.2 Notwithstanding the foregoing, all extra costs caused by the force majeure, such as transportation and storage costs, warehouse or yard rent, demurrage, insurance, delivery etc. are for the account of the Customer and shall be paid to NMTS/OSB/IMS at the latter's first request.

**Article 16. Law and Jurisdiction**

- 16.1 Any (process of the entry into any) Agreement, including all matters relating to an Agreement and Services (to be) rendered shall be governed by, and construed in accordance with, the laws of Curaçao.
- 16.2 Any claim or dispute arising out of or in connection with the Agreement or the Services shall be submitted to the exclusive jurisdiction of the competent court in Curaçao.

**Article 17. Final provisions**

- 17.1 These Terms and Conditions may be referred to as "Terms and Conditions NMTS/OSB/IMS".
- 17.2 The Customer may not assign or transfer any rights or obligations under the Agreement or these Terms and Conditions without the prior written consent of NMTS/OSB/IMS.
- 17.3 These Terms and Conditions, together with the terms of any Agreement, comprise the entire agreement between NMTS/OSB/IMS and the Customer with respect to the Services.
- 17.4 The decision of NMTS/OSB/IMS to waive any provision herein, either by conduct of otherwise, shall not be deemed to be a further or continuing waiver of such provision or to otherwise waive or invalidate any other provision herein.
- 17.5 To the extent that one or more (parts of) provisions from these Terms and Conditions would in law transpire to be null and void or would be annulled and/or avoided, or would in equity be not applied, then that is of no consequence to the validity of the other (parts of) provisions of these Terms and Conditions.
- 17.6 If there is any doubt regarding the interpretation or applicability of these Terms and Conditions, the decision of NMTS/OSB/IMS regarding the interpretation or applicability is binding.

