



# GAC North America

## Standard Terms and Conditions

### I. Definitions

A. “Agent” – means GAC North America (“GAC”) and/or its subsidiary and affiliated Companies and, where applicable, its Sub-Agents, within the United States, acting solely as agent for the Principal and the Vessel(s).

B. “Agency Services” – means the services which are provided by GAC to the Principal pursuant to these Standard Terms and Conditions (“Conditions”), whether or not for reward, and whether same be by way of charge, fee, commission, or remuneration of any other kind.

C. “Applicable Law” - means the General Maritime Law of the United States and, where applicable, such other federal, state and local rules, regulations and laws mandatorily applicable in the Territory. The definition of this term is without prejudice to the choice of law set forth in Section XIV of these Conditions.

D. “Contract” shall have the meaning set forth in Section II. A of these Conditions.

E. “Principal” – means the company, firm, or person who has or whose representative has appointed GAC to act as Vessel agent and who is the owner, disponent owner, time charterer, voyage charterer, operator, and/or manager of the Vessel(s) represented by GAC and/or the carrier under the bill of lading in connection with which Agency Services are to be provided by GAC.

F. “Sub-agent” - means that person or other business entity appointed and sub-contracted by GAC to perform Agency Services for GAC on behalf of a Principal and/or Vessel pursuant to these Conditions.

G. “Supplier” – means the company, firm, or person who is contracted by GAC to supply services or goods to the Principal and/or the Vessel through GAC, acting as Agent.

H. “Territory” - means the ports, harbors, port facilities, terminals, anchorages and inland, offshore and territorial waterways of the United States of America and the States therein, and areas outside such territorial waters in the United States Exclusive Economic Zone (EEZ), in which GAC has been appointed to act as Agent to perform Agency Services for the Principal and the Vessel(s).

I. “Vessel(s)” – means the marine vessel(s) or barge(s) for which GAC has been appointed to act as Agent in the Territory.

As used herein, words in the singular shall include the plural and vice versa. Words importing the masculine shall include the feminine and neuter and vice versa; and words importing persons shall incorporate bodies’ corporate, unincorporated associations, sole proprietorships, partnerships of every kind and character, and any and all other business organizations or entities recognized by Applicable Law.

The headings in these Conditions are for convenience only and shall not affect their interpretation.

## II. **General**

A. The Principal hereby appoints GAC as Agent upon these Conditions to provide Agency Services in the Territory on behalf of the Principal and the Vessel(s), and to perform any and all such other services acting solely as Agent, which GAC is able and has agreed to perform, and which Principal may reasonably request pursuant to Section IV.D hereof for the purposes of Vessels calling in the Territory (“Supplemental Services”). Application of these Conditions to the performance of Agency Services by GAC shall not depend upon a separate signed or written Principal-Agent agreement for the provision of Agency Services. Such agreement shall be deemed to exist and be enforceable under Applicable Law upon the oral request of any party acting on behalf of the Principal or the Vessel and GAC’s actions undertaken in reliance upon such request. In the presence of any such oral or written agreement, these Conditions shall be deemed to be incorporated for all purposes regardless of whether such Conditions are referenced in such oral or written agreement. In the event of a conflict between any term in these Conditions and any term in any such oral or written agreement, these Conditions shall prevail. For the avoidance of doubt, these Conditions, coupled with the terms of any oral request for Agency Services or any separate written Principal-Agent agreement for such services shall collectively constitute the “Contract” between Agent and Principal.

B. In appointing GAC, and/or any of its subsidiary or affiliated companies to act as Agent, as well as all transactions/services entered into by GAC and/or any of its subsidiary or affiliated companies or any of their Sub-Agents, the Principal agrees that unless otherwise mutually agreed in writing at least 48 hours prior to the Vessels arrival, the provisions herein are deemed to be received, understood, and accepted in full.

C. If any international convention or transport law or other Applicable Law is compulsorily applicable to the Agency Services or any Supplemental Services provided by GAC (collectively, “Compulsory Legislation”), these Conditions shall, with regard to such services only, be subject to such Compulsory Legislation. However nothing in these Conditions shall be construed as a waiver by GAC of any of its rights or an increase of any of its responsibilities or liabilities under such Compulsory Legislation or any other Applicable Law. If any part of these Conditions is in any way contrary to such Compulsory Legislation or other Applicable Law, such part shall, in connection with such services, be overridden to that extent and no further.

D. It is understood and agreed that GAC does and always will act “As Agents Only” for, and on behalf of, the Principal and the Vessel, and will render such Agency Services with reasonable care and diligence. Nothing in these Conditions shall give rise to the relationship of employer and employee, or partnership, or any other non-agency business relationship between the parties.

## III. **Liability and Indemnity**

A. The Principal and the Vessel, and all underwriters at interest therewith (collectively, the “Indemnifying Parties”) shall at all times, indemnify, hold harmless and defend GAC and its subsidiary and affiliated companies, all Sub-agents and other independent contractors appointed

by GAC to perform services for the Principal and the Vessels hereunder (collectively, the "Indemnified Parties") against any and all debts, claims, demands, actions, proceedings, and lawsuits relating to disputes, property damage or loss, personal injury, or death alleged to arise and/or arising out of, directly or indirectly, operations or conditions connected with the Vessel, the berths or places at which the vessel calls within the Territory, her crew, owners, charterers or cargo, by whosoever asserted, which any of the Indemnified Parties may, in good faith, incur or suffer in whole or in part by reason of their performance of services under these Conditions.

B. The parties hereby covenant and agree that GAC, acting as Agent under these Conditions, will act solely for an on behalf of the Principal, with either the express or implied authority to do so, and cannot and shall not be personally liable to pay any debts due to Suppliers from the Principal. Principal shall hold harmless, defend and indemnify the Indemnified Parties of and from any and all such debts, claims, demands, actions, proceedings and lawsuits relating, directly or indirectly, all such actions.

C. **IT IS HEREBY EXPRESSLY AGREED THAT NEITHER THE INDEMNIFIED PARTIES, NOR ANY SERVANT, AGENT OR EMPLOYEE THEREOF SHALL UNDER ANY CIRCUMSTANCES WHATSOEVER BE UNDER ANY LIABILITY WHATSOEVER UNDER THESE CONDITIONS TO THE INDEMNIFYING PARTIES OR ANY THIRD PARTIES, FOR ANY LOSS OR DAMAGE TO PERSONS OR PROPERTY, OR DELAY OF WHATSOEVER KIND OR NATURE, INCLUDING, BUT NOT LIMITED TO VESSEL DEMURRAGE OR EXCESS BERTH OCCUPANCY OR SIMILAR CHARGES, ARISING OR RESULTING DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, FROM ANY ACT, NEGLIGENCE, OR DEFAULT ON THE PART OF ANY SUCH INDEMNIFIED PARTY WHILE ACTING IN THE COURSE OF OR IN CONNECTION WITH HIS EMPLOYMENT PURSUANT TO THESE CONDITIONS. THE INDEMNIFYING PARTIES HEREBY UNDERTAKE TO HOLD HARMLESS, DEFEND AND INDEMNIFY THE INDEMNIFIED PARTIES FOR ANY AND ALL DEBTS, CLAIMS, DEMANDS, ACTIONS PROCEEDINGS AND LAWSUITS ARISING AS A CONSEQUENCE OF ANY SUCH LOSS, DAMAGE OR DELAY, INCLUDING REIMBURSEMENT OF ANY AND ALL REASONABLE COSTS AND ATTORNEYS' FEES INCURRED IN DEFENDING SUCH ACTIONS.**

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

E. In the event that GAC or any other Indemnified Party acting at GAC's instruction is required by the Principal to file data with a port facility or government official in compliance with the ISPS Code or for ENOA/D or AMS purposes (or any other purpose required by Applicable Law), GAC and those for whom it is responsible will exercise reasonable skill and care to file the data correctly and within the prescribed filing deadlines. However, GAC accepts no responsibility or liability (i) for the correctness and accuracy of the information provided by the Principal, or (ii) if the Principal fails to provide the data in a timely manner, or (iii) if there are technical problems or human errors beyond GAC's control. GAC will provide the filing process under these Conditions as a data exchange service only. **ANY LOSSES OR LIABILITIES RESULTING FROM THE FILING OF SUCH DATA, WHETHER OR NOT GAC WAS OR IS CLAIMED TO HAVE BEEN NEGLIGENT OR AT FAULT IN ANY WAY, REST WITH THE PRINCIPAL. THE INDEMNIFYING PARTIES SHALL HOLD HARMLESS, DEFEND AND INDEMNIFY THE INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF ANY AND ALL SUCH LOSSES OR LIABILITIES, INCLUDING,**

**BUT NOT LIMITED TO ANY PENALTIES, FINES, OR COSTS OF DELAY, EVEN IF CAUSED IN WHOLE OR IN PART DUE TO THE NEGLIGENCE, FAULT OR FAILURE TO EXERCISE REASONABLE CARE OF AN INDEMNIFIED PARTY.**

F. Subject to the foregoing, any liability of GAC and its subsidiary and affiliated companies, all Sub-agents and other independent contractors appointed by GAC to perform services for the Principal and the Vessels hereunder to the Principal and/or to the Vessel, in respect of a negligent act committed by the such persons, shall not exceed the amount of five (5) times the total agency fees payable by the Principal to the Agent in respect of any single port call or voyage of the Vessel, which fees shall be deemed earned in any event. In no event, will either party be liable to the other for any indirect, special, or consequential damages of any nature whatsoever, including but not limited to any costs of delays of the Vessel or any other marine vessel.

**IV. Fees / Contract**

A. A Job Number will be assigned by GAC and, in the absence of a specific signed Principal-Agent agreement, a basic agency fee, plus ancillaries, will be assessed for each initial port call at each port, or out-port location, at any one berth, place, or anchorage, except anchoring to await berth availability (provided no boarding procedure is required) within each port area.

B. In instances where a port call is cancelled or diverted after work has commenced in preparing for that port call, GAC may be reimbursed pro rata for services rendered.

C. Port calls assigned to GAC for port agency attendance to provide Agency Services for a voyage charterer or time charterer will be provided as required by the charterer. Owners/Husbandry items or other Vessel-related services will not be included in charterer's fees and will be invoiced separately along with an appropriate fee.

D. Additional compensation, consistent with any Supplemental Services rendered, will be charged for as extraordinary services, including but not limited to declaration of General Average, strandings, collisions, allisions, groundings, drydocking, major repairs, medical evacuation of crew, etc., including all expenses incurred on behalf of the Principal in connection with any such incident. In addition, a ten percent (10%) interest rate will be applied to any unfunded amount required to be advanced by Agent on Principal's behalf, provided notice has been given to the Principal to advance the necessary balance of funding to GAC for the port call and Principal has failed to provide such advance payment in a timely manner.

E. GAC shall be entitled to deduct from sums held by GAC for the Principal's account any amounts due to GAC from the Principal.

F. Principal shall pay all costs of collection, including reasonable attorneys' fees, and shall pay interest on all unpaid amounts outstanding sixty (60) days after accounts are rendered, at fifteen percent (15%), compounded annually.

G. Unless otherwise agreed, or if the Vessel for which the Agency Services are provided does not enter port or anchorage, applicable Agency Fees will be based on arrival Pilot Station and Dropping Outbound Pilot.

H. Where there is a signed Principal – Agent Agreement in place which is subject to these Conditions, unless otherwise noted or agreed, the Principal shall give three (3) months’ written notice of the termination of the Contract. Failure to do so will allow GAC to claim fees equivalent to up to three (3) months of average fees based on the region within the Territory for which the Contract applies.

**V. Disbursement Accounts (Proforma / Final)**

A. Unless otherwise agreed or covered by a separate agreement between GAC and the Principle regarding financial responsibility of the Principal, funds requested to cover the estimated port expenses, as determined by GAC, will be transmitted by GAC to Principal in a written proforma disbursement account (“PDA”) estimate of the anticipated port call related fees and expenses and such estimate shall be telegraphically/electronically remitted to GAC’s specified bank/account prior to arrival of the Vessel and the rendering of any Agency Services. GAC will accept bank confirmation of remittance, as concerns port disbursement funds only, but will advance no cash to the Vessel Master unless funds are in the bank prior to delivery.

B. GAC shall ensure that the PDA estimate provided to the Principal is as accurate as possible, but it is understood and agreed that such PDA estimate is for guidance purposes only and is not binding on GAC. The final disbursement account (“FDA”) may vary from the PDA estimate for various reasons beyond GAC’s control. The Principal is liable for and shall pay upon receipt the full amount stated in the FDA in excess of the PDA funds previously paid to GAC. Any excess funds remaining in the PDA after completion of the Agency Services shall be credited to Principal’s account for future Vessel calls, or, upon request of Principal, be remitted to Principal’s designated bank/account.

**VI. Rebillables**

GAC will not at any time be responsible for rebillables/shifting expenses between the Principal and Charterer. Unless the charter party is made fully available to GAC, these expenses are the Principal’s responsibility. GAC will not be involved in rebillables/shifting expenses when typically an agreement in the charter party clearly states the Principal must supply these expenses to the Charterer.

**VII. Funds**

Unless a specific signed Principal-Agent agreement is in place articulating a customized port call funding procedure or other financial responsibility undertaking between GAC and a particular Principal, failure on behalf of the Principal to advance funding to GAC or comply with the required financial responsibility undertaking will be considered a material breach of contract on behalf of the Principal, whereby the Agent may provide immediate notice to terminate the Contract and execute any and/or all of the following remedial measures:

A. GAC shall have a valid and enforceable maritime lien against the Vessel for all unreimbursed expenses incurred in connection with performance of Agency Services for the port call of that Vessel, for another previous port call for the same Vessel, or another previous port call for the same Principal.

B. GAC shall be authorized to deduct from monies held by GAC for the Principal's account any amount due from the Principal.

C. GAC may avail itself of the maritime arrest procedures available under Applicable Law to arrest and detain the Vessel in port until such funds are received by GAC or appropriate security is posted.

#### VIII. **Suppliers**

Unless otherwise stated in writing, GAC at all times shall act solely as agents for and on behalf of the Principal and shall have authority to enter contracts with Suppliers as agent for the Principal, either upon the express consent of the Principal, or as may reasonably be required to carry out the Agency Services requested by the Principal. It is expressly understood and agreed that upon appointment of GAC as agent, either in writing or otherwise pursuant to Section II.A of these Conditions, GAC shall be deemed to have the actual authority to enter into such contracts with Suppliers on behalf of Principal as are reasonable and necessary to carry out its duties hereunder.

#### IX. **Sub-agents**

GAC shall have authority to appoint Sub-agents in its sole and absolute discretion to perform Agency Services on behalf of the Principal, including such services as may be subject to these Conditions, remaining at all times responsible under these Conditions for the actions of the Subagent. Any Sub-agent appointed under this Section IX shall be deemed to have all authority granted to GAC in the performance of GAC's Agency Services hereunder.

#### X. **U.S. Customs Bond**

A. Use of GAC's US Customs bond shall be provided to the Principal as required by law and will be tendered by GAC in good faith in order to permit Vessels to engage in immediate cargo operations prior to formal entry with U.S. Customs. Alternatively, Principal or Vessel owners, operators, charterers or managers may post their own bond, providing GAC with the appropriate Bond Number, three digit surety company code, date of the bond, principal holder's name, Importer Number, and the amount of the bond.

B. Any government services penalties directed against GAC's bond, unless occasioned by GAC's gross negligence or lack of due diligence, will be for account of the Principal, as will the cost of any legal defense, and/or time/fees used to mitigate said penalty; and the Principal shall indemnify, hold harmless and defend GAC from the consequences of such penalties.

#### XI. **Sanctions / Ethics / Bribery**

A. GAC is legally bound to comply with European Union and United States of America (OFAC) sanctions programs, as well as any similar applicable laws or regulations in other jurisdictions in relation to sanctions, ethics, and bribery. If the Principal requests the Company to perform any Services in breach of these sanctions programs, laws or regulations, GAC will immediately notify the Principal and confirm the extent to which GAC is prevented from performing the Services requested.

B. GAC reinforces the application of these laws and regulations through its Code of Ethics, Anti-Bribery policy and Anti-Money Laundering policy, as well as training programs. GAC has a zero-tolerance approach to breaches of any laws or regulations relating to ethics, bribery, or money laundering.

C. If during the performance of any Agency Services requested by the Principal hereunder, GAC encounters a breach or believes that a violation of the relevant ethics, bribery, or money laundering programs, laws or regulations may occur, GAC will immediately notify the Principal and discontinue performance hereunder which relates in any way to such breach or violation.

D. GAC shall have no liability to the Principal for any claims, losses, liabilities, or expenses related to the inability of the Agent to perform any Agency Services due to its compliance with any sanctions program or breach of any ethics, bribery, or money laundering laws or regulations.

## **XII. Proprietary Rights / Communications**

A. All information and communications (including the PDA and FDA) provided by GAC shall be considered as a trade secret and the sole and exclusive intellectual property of GAC. GAC 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 the Principal. There are no licenses, transfers, and/or assignments of intellectual property granted under these Conditions, whether expressed or implied. Principal agrees that GAC'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 permission of GAC. Principal further agrees to give notice of the Conditions to all its service providers, agents, servants, and other contractors, and to guarantee that they will be bound hereby. Any violation of GAC's intellectual property rights by any such service provider, agent, servant or other contractor shall be deemed a violation hereunder by Principal, entitling GAC to terminate the Contract for cause pursuant to Section XIII hereof and to seek any and all legal remedies provided by law or under the Contract.

B. All communications between GAC and the Principal will be treated as confidential by GAC and shall not be disclosed to third parties unless required by due process of a court. All communication between GAC and the Principal is intended only for use by the party to who it is addressed and may contain information that is privileged or confidential. Any dissemination, duplication, or distribution of any such message to third parties not intended to receive it is strictly prohibited.

## **XIII. Termination**

A. If the Contract between the parties for the provision of Agency Services is based upon a separate written Principal-Agent agreement, unless otherwise stated to the contrary in such agreement, the Contract may be terminated by either party for either party's convenience upon giving not less than three (3) months' advance written notice to the other party, therein setting forth the date of termination.

B. GAC may terminate the Contract for cause with immediate effect upon written notice to Principal, if any one of the following occurs (each an "Event of Default"):

1. The Principal fails to satisfy any payment obligation to GAC under the Contract, or fails to maintain the disbursement account in accordance with the Contract, and where such breach is not remedied within three (3) Business Days of written notice by GAC of such breach;

2. A voluntary or involuntary bankruptcy petition, insolvency, receivership or similar filing is made by the Principal, the Vessel owners, operators, charterers, or managers, or their creditors or otherwise; or in the event of the maritime arrest, seizure or other legal action against the Vessel or the Owners under Applicable Law; or

3. The Principal, or the Vessel owner, operator, charterer, or manager assigns, novates, transfers or otherwise disposes of or purports to assign, transfer, novate or otherwise dispose of any or all of its rights and/or its obligations under this Contract without advance written notice and the express written consent of GAC.

C. Either party may terminate the Contract for cause by giving written notice to the other in the event that the other commits a material breach of any other terms and conditions of the Contract and fails to remedy such breach within ten (10) days after such written notice to do so.

#### **XIV. Choice of Law and Dispute Resolution**

A. The Contract between the parties and all disputes arising thereunder or in connection with the interpretation, enforcement, validity, or performance thereof (collectively, "Disputes") shall be governed by and interpreted in accordance with the General Maritime Laws of the United States of America and, to the extent such laws are not applicable, and provided the law of the Territory does not require the application of another law, the laws of the State of Texas, without regard to conflicts of laws principles thereof.

B. Any unresolved Dispute shall be decided by a panel of three (3) arbitrators, consisting of one arbitrator to be appointed by each of the Parties hereto and a third by the two so chosen, in accordance with the Rules of the Houston Maritime Arbitrators Association ("HMAA"), unless the Parties mutually agree to one arbitrator. The arbitration shall be held in Houston, Texas. Should the sum claimed by each party not exceed US\$100,000, the arbitration shall be governed by the "Fast Track Arbitration Rules" of the HMAA, as defined in the HMAA's then current Rules for such procedure. Any action by a Party to enforce any arbitration award rendered hereunder, or for any other reason permitted by this Agreement or by law, shall be brought in the United States District Court for the Southern District of Texas, Houston Division, and both Parties hereby irrevocably submit to the exclusive jurisdiction thereof for such purpose.