

# **BULGARIAN ASSOCIATION OF SHIPBROKERS AND AGENTS**

## *GENERAL CONDITIONS*

### 1 INTRODUCTORY NOTES

1.1 The present General Conditions (the GC) are issued by the Bulgarian Association of Shipbrokers and Agents, Varna (Bulgaria), hereinafter referred to as BASBA. They shall be regarded as basic principles of the contractual terms between its Members and their Principals in conducting their business, provided that the GC are made known to the Principals by the Members in the course of their business arrangements, and unless otherwise expressly agreed upon in the respective contracts.

1.2 The GC follow the letter and spirit of the 'Recommended Principles for the use of Parties Engaged in Chartering and Ship's Agency Procedures', issued by the Baltic and International Maritime Council; the business ethics and the good shipping practice. The GC support and comply with the FONASBA Code of Conduct.

1.3 In performing their duties, the BASBA Members have no right to deviate from the applicable Bulgarian Law, the Bulgarian Merchant Shipping Code and from the applicable decrees issued by the Bulgarian Governmental and/or regional governing bodies.

### 2. DEFINITIONS AND COMPETENCE

2.1 The term "Agent" means an individual or company carrying on the profession of ship agency, that is the representation of the interests of a shipowner or operator in a particular port or ports. It shall include: Tramp / Liner / Port / Booking / Canvassing / Husbandry/ Protecting / Forwarding agent, and the like; acting on behalf and for account of its Principal. The Agent may be directly appointed by a Shipowner-manager, or nominated by a Charterer, as the case may be. Even if nominated by the Charterer, the Agent shall be appointed as such by the owner / manager of the respective ship, who will be regarded as Principal.

2.2 The term "Broker" means an individual or company carrying on the profession of ship broker, that is acting as an intermediary for the purposes of arranging transportation of goods by sea. It shall include chartering and / or sale & purchase broker, acting on behalf and for account of its Principal.

2.3 The Principal is the party entrusting the attendance of its business to the Agent / Broker, and on whose behalf and account the services of the latter are performed.

2.4 The term "the Contract" shall include: longterm, or general arrangement/ single-case, or job appointment/ any free-form agreement between the Principal and the Agent/Broker, pertaining to the services which the latter shall perform on behalf and for account of the Principal.

2.4.1 The Contract related to the agency appointment and attendance must be made, or confirmed at a later stage, in writing between the contracting parties, either by letter, or facsimile, or telex, or e-mail. By such a Contract and its scope the Principal entrusts the attendance of his business to the Agent in a Bulgarian port, and / or ports, and / or hinterland, as the case may be. Depending on the circumstances, the Principal, or the Agent, may request and agree amendments to the original Contract; these amendments, made always in writing, shall be regarded as an integral part of the Contract.

2.4.2 There shall be no need for a specific written contract for Broker's services, unless the parties so require. The fact that a Principal and a Broker have entered into negotiations with a third party, until an agreement is reached, or until negotiating parties agree to disagree, shall be sufficient indication of the relations between the

Principal and the Broker. The Broker, within the scope of these GTC, is eligible to act as an intermediary regardless of whether the two negotiating parties, or either of them, are Bulgarian entities, or not, and / or the subject of the negotiations is of Bulgarian origin / property, or not.

2.5 The Agent / Broker shall be registered in accordance with the Bulgarian Commercial Law and applicable regulations, if any, to perform the respective activities in particular. This being a pre-condition of application for membership in the BASBA, shall give it the right to provide information about the membership status to any interested party, on request.

### 3. DUTIES, RIGHTS AND LIABILITIES

#### 3.1 The Agent/ Broker shall:

3.1.1 always act within the scope of its duties in accordance with the custom of the trade, the relevant Contract / authority given to him, the good shipping practice. By doing so it shall keep all third parties, having connection with the furthering and attending its Principal's business, advised that it is acting on behalf and for account of the respective Principal;

3.1.2 exercise diligence, due care and attention towards its Principal, including ill guarding and promoting his interests;

3.1.3 apply the principles of morality and honesty in the conduct of his profession;

3.1.4 promote regional, national and international shipping with view to providing adequate and optimal shipping services for the development of the national and international seaborne trade by supporting and complying with FONASBA Quality Standard for Shipbrokers and Agents;

3.1.5 have the right of remuneration for its services, as stated in Article 4;

#### 3.2 The Agent shall:

3.2.1 render its service to its Principal as economically and efficiently as circumstances permit;

3.2.2 provide its Principal with information about the applicable port and other rules and regulations, tariffs, as published; customs of the trade, and the like;

3.2.3 report to the Principal about the ship's equipment and cargo movements, the status of operations, as may be required and / or agreed;

3.2.4 have the right, without necessarily asking its Principal's consent, to appoint sub-agents; make arrangements for customary services, such as: pilotage, tug-boat assistance (if compulsory or required by the Master), immigration and Customs clearance, and the like;

3.2.5 obtain its Principal's prior consent and instructions for actions in cases, such as: appointing surveyors; ship's and equipment repairs; bunkering; crew repatriation; engaging Lawyers, P & I correspondents, Classification Society representatives; salvage operations; and any other that may affect the Principal's liability and / or require extraordinary payment arrangements by the Principal. However, in emergency situations the Agent shall follow the orders of the Master (or commanding ship's officer at the time of incident), these orders in such cases shall be regarded as given by the Principal, accordingly affecting his responsibility. Likewise, in emergency situations affecting the Principal's equipment / property in port or hinterland, the Agent shall have the right to take appropriate actions in guarding and engaging the interests of its Principal on behalf and for account of the latter, even where obtaining its prior consent is impossible; in such cases the Agent shall report to the Principal at first opportunity;

3.2.6 arrange for ordinary ship's supply, on Principal's and/or Master's orders, on behalf and for account of the Principal, of items, such as: charts, nautical publications, provisions, ordinary spares, fresh water, dunnage and separation material, stationery, and the like;

3.2.7 assist the Principal in obtaining visas, any special permits for visits and / or repatriations, hotel arrangements, etc., of the Principal's servants, in accordance with the Bulgarian rules and regulations;

3.2.8 have the right to submit ordinary and customary statistical data, related to its business with the Principal, if so required by the Governmental statistical bodies, without divulging details of a confidential nature;

3.2.9 assist the Principal in accordance with its instructions in cases of Bulgarian Courts and Authorities procedure against the Principal that may be invoked by any third party. If ordered by Prosecutor's office, and / or Court, and / or Authorities, the Agent shall be bound to submit itself before any such body to make or present statements, or provide the required information, even if such information may be regarded as confidential between the Principal and the Agent in a normal course of events to the exclusion of circumstances listed in the Civil Procedure Code and Penal Procedure Code of the Republic of Bulgaria or the privileged documents /privilege against self-incrimination under English law or some other law where a different jurisdiction has been agreed under art. 5;

3.2.10 be bound to ensure from the Principal an advance payment into the Agent's bank account of the amount/s covering the disbursements and the costs, including the remuneration, related to the particular forthcoming ship's call, and / or the Principal's intended business. For that purpose the Agent shall have to submit prior information of these costs to the Principal. The same procedure shall be followed towards a party, other than the Principal, responsible to pay these costs, as the case may be. The bank charges for transfer of funds from / to the Principal, including exchange-rate losses, if any, shall be for account of the Principal;

3.2.11 make, within the prescribed period of time, a final account of all outlays incurred for the Principal and also render to him a statement of account of Principal's funds;

3.2.12 keep financial books according to the Bulgarian Law, and as instructed by the Principal. The same shall refer as well to the Agent's duty to keep copies of accounts / disbursements / voyage documents and reports / bank payment details, etc.;

3.2.13 have the right to apply for a lien and / or arrest of property of the Principal in Bulgaria or elsewhere, in accordance with the applicable law, for covering expenses, costs, remuneration due by the Principal (or the party responsible to pay these costs), including any claims against the Agent arising out of its the Principal's business attending in good faith;

3.2.14 be liable to the Principal for any proven damages as a result of the Agent's gross negligence in performing his duties. Such a liability shall be in any case limited up to the amount of the remuneration due to the Agent for its services rendered. However, the Agent shall not be held responsible and liable when it has been prevented to perform its duties for reasons, such as: Act of God, war, lockouts, Government orders, and the like.

### 3.3 The Principal shall:

3.3.1 provide the Agent with adequate and clear orders, information, documents for the performance of Agent's services prior to rendering the services. Any omission thereof and resulting damages, if any, shall be a responsibility of the Principal;

3.3.2 advance the Agent with sufficient funds to cover the Principal's intended business, including the Agent's remuneration. In any case, the Principal shall reimburse the agent with all and any costs and outlays that may have been paid by the Agent while attending the Principal's business;

3.3.3 keep the Agent adequately covered with regard to the duties rendered by the Agent, including by providing guarantees if and when such are requested.

3.4 The Broker shall:

3.4.1 be diligent at acquainting himself with market conditions and shall keep its Principal accurately advised and guided thereof;

3.4.2 handle all proposals accurately and expeditiously;

3.4.3 always assist the Principal in reaching and performing an agreement, always rendering its best efforts and using its best judgement on its Principal's behalf. In any case, the Broker shall not act beyond the authority as given by the Principal;

3.4.4 be responsible in presenting the realities of a transaction to its Principal in an impartial and fair way.

#### 4. REMUNERATION

4.1 The Agent's remuneration, payable by the Principal, shall be in accordance with their Contract, and / or with the customarily applicable Agency Fees Scale that may be published from time to time.

4.2 The Broker's remuneration, payable by its Principal (or other party as per contract) shall be in accordance with the terms of the respective contract.

4.3 The Agent / Broker shall have the right to deduct the applicable remuneration from any Principal's funds, available with them as specified in the Contract.

#### 5. DISPUTES

The Principal and the Agent / Broker shall try to settle any disputes between them amicably and fairly. Should this be impossible, such disputes shall be referred to arbitration or court in Bulgaria, with Bulgarian Law to apply. The Agent / Broker shall be at liberty to consider a proposal by the Principal to use a different place / law for such action.

#### 6. FINAL PROVISIONS

The GTC, and any amendments thereof, are adopted by the BASBA in accordance with its rules. The present GTC become effective as from 01.01.2008.