

# ATLANTIC BULK LTD

## TERMS AND CONDITIONS

The following Terms and Conditions are incorporated into and with any dealings between the parties and any contract, if any, executed by the parties identified hereinafter (collectively, the "Work Order") such that the Work Order and these Terms and Conditions constitute a single integrated agreement between the customer identified on the Work Order ("Customer") and Atlantic Buk Ltd and any of its affiliates or agents ("Atlantic Bulk") which both agree is supported by adequate consideration and by which each intends itself to be legally bound.

- 1) SERVICES. ATLANTIC BULK shall render the services identified on the Work Order ("Services") with respect to the materials identified therein ("Materials") in a workmanlike manner and in accordance with any specific Terms set forth in the Work Order. Unless provided otherwise in the Work Order and except as set forth in these Terms and Conditions, (ii) the Services shall be completed at such time as ATLANTIC BULK shall determine. No change, supplement or addition to the Services shall be binding upon ATLANTIC BULK except as agreed in writing by ATLANTIC BULK and Customer. In the event that ATLANTIC BULK shall accept additional work from Customer without completion of a new Work Order, all Terms and conditions under and applicable to the last Work Order (including these Terms and Conditions whether or not attached to such prior Work Order) shall apply to all Services until a new Work Order is given by Customer and accepted by ATLANTIC BULK
- 2) PAYMENT. The fee for the Services shall be as set forth in the Work Order or, if no such fee is set forth therein, the fee for the Services shall be in accordance with Atlantic Bulk's normal fee schedule as in effect at the time. ATLANTIC BULK reserves the right to adjust its fees from time to time and Customer agrees to pay such fees as so adjusted, whether or not it has received written notice of such adjustment. Payment of all fees shall be due in advance unless Customer has completed ATLANTIC BULK'S credit application and the same has been approved by ATLANTIC BULK. Upon the granting of credit to Customer by ATLANTIC BULK payment of all fees shall be due within thirty (30) days after date of invoicing by ATLANTIC BULK. In the event of the failure of Customer to render full payment of the fee within such period, Customer shall pay, in addition to the fee, a late fee equal to one and one-half percent ( 1 1/2%) of the amount not timely paid per month until the date of payment. In the event that ATLANTIC BULK engages the services of agents, attorneys or other professionals in order to collect any fees or any other amounts owing by Customer to ERC, Customer shall be responsible for and shall pay to ATLANTIC BULK, in addition to the foregoing amounts, all expenses and costs of such collection, including without limitation reasonable attorney's fees, but not less than the greater of one percent (35%) of the amount of the unpaid amount or Two Thousand Five Hundred Dollars (\$2,500).

### Financial Responsibility and Credit

- (a) Acceptance of a work Order by ATLANTIC BULK is made on the creditworthiness of Customer, its agent, and the Receiving Vessel, if any.
- (b) If the Customer in any way breaches the Agreement, defaults in the payment of any indebtedness to ATLANTIC BULK (whether arising out of the Agreement or otherwise) or becomes bankrupt or insolvent, or if the ATLANTIC BULK at any time considers the financial condition of the Customer to be unsatisfactory, ATLANTIC BULK may, in addition to any other rights and remedies it may have, cancel or suspend the Work Order until such time as the Customer remedies such breach or default and/or provides suitable additional security and or guarantee acceptable to the ATLANTIC BULK.
- (c) If at any time Customer's Outstanding Indebtedness (as defined below) exceeds the Credit Limit then in effect for Customer, Customer must reduce the Outstanding Indebtedness due ATLANTIC BULK to an amount that is less than the Credit Limit then in effect for Customer by taking any one of the following actions:
  - (i) Pay ATLANTIC BULK all or a portion of the Outstanding Indebtedness such that the remaining balance of the Outstanding Indebtedness is less than the Credit Limit, or
  - (ii) Provide ATLANTIC BULK a letter of credit in a form and substance and from a first-class bank reasonably acceptable to ATLANTIC BULK, pursuant to which ATLANTIC BULK shall be permitted to draw down an amount that is not less than the amount by which the Outstanding Indebtedness exceeds the Credit Limit.
- (d) "Outstanding Indebtedness" means, as of any day during the term of the Agreement, all amounts due or which will become due to ATLANTIC BULK under all Agreements between ATLANTIC BULK and Customer.

- 3) COVENANTS OF CUSTOMER. As an inducement to ATLANTIC BULK's rendition of the Services, Customer hereby makes the following representations and warranties to ATLANTIC BULK with the understanding and intent that ATLANTIC BULK will rely upon the same in rendering the Services:
    - a) There is no contract, agreement, statute, ordinance, rule, regulation or law by which Customer is bound or to which Customer is subject that would prevent or prohibit ATLANTIC BULK from carrying out the Services;
    - b) Customer has full power and authority to enter this agreement and to carry out the transactions contemplated hereby; and
    - c) There are no permits, consents or approvals (other than permits and licenses for which ATLANTIC BULK is responsible) which have not been given or received which would be necessary in order to allow Customer's entry into this agreement and consummation of the transactions contemplated hereby.
  - 4) COVENANTS OF CUSTOMER. In connection with this agreement, Customer makes the following additional covenants and promises:
    - a) Customer agrees to indemnify and hold harmless ATLANTIC BULK, its officers, employees, directors and shareholders from and against any and all claims, demands, causes of action, investigations, (and all proceedings pursuant thereto) (hereinafter "Claims") resulting from or arising in connection with any breach of this agreement by Customer, its agents or representatives, and all damages and liabilities arising therefrom, including without limitation, court costs and attorney's fees. ATLANTIC BULK agrees to provide reasonably prompt notice of any Claim as to which ATLANTIC BULK intends to make a claim for indemnity under this agreement,
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provided that a failure to provide such notice shall not limit, abate or negate Customer's duty of indemnity hereunder unless the failure to provide such notice materially prejudices Customer's ability to defend against such Claim. Notwithstanding a claim for indemnity hereunder, Customer shall have the option to participate in such proceeding and control its own defense, in which event, Customer shall not be responsible for the result of any such direct defense; AND

- b) Customer shall cooperate in any investigation or proceeding by any governmental body, agency or instrumentality, federal state or local, with respect to or involving the Material or any component thereof, including providing access, at reasonable times and subject to reasonable notice, to all records of Customer bearing on the generation, storage, processing, handling, transportation, disposal, spillage, leakage, clean-up or other remediation of the same.
- 5) REMEDIES ATLANTIC BULK
- a) In addition to all other remedies available to ATLANTIC BULK, under this agreement, at law or in equity, as a result of the breach of this agreement by Customer, ATLANTIC BULK shall have the following rights and remedies:
    - i) The right to complete the Services in accordance with the Work Order,
  
    - ii) In the event that ATLANTIC BULK determines that Customer's breach entails additional work (in addition to the Services) in order to complete the Work Order, to determine the scope and the charge for such additional work and to notify Customer of such determination (either by telephone, in writing or by any electronic medium) that ATLANTIC BULK proposes to complete such additional work; in the event that Customer fails to approve such proposal (a failure to give such approval and to make such deposit within the same business day of the giving of such notice being a rejection), Customer shall be liable to pay to ATLANTIC BULK a delay fee equal to \$1,000 per day until Customer approve such change to the Work Order or t)otherwise fashions a remedy acceptable to ATLANTIC BULK,
  - b) The foregoing remedies shall be non-exclusive and may be employed singly, together or serially. No waiver of any default or breach by Customer shall constitute or be construed to effect a waiver of any other or any subsequent default or breach of the same or any other kind.
- 6) CUSTOMER'S REMEDIES. In the event that Customer shall have a cause of action against ATLANTIC BULK for a material breach of this agreement by ATLANTIC BULK or in connection with any Work Order, Customer shall be entitled to the return of the purchase price of any unperformed Services, which shall be Customer's exclusive remedy, and ATLANTIC BULK shall not be liable for actual or consequential damages of any kind.
- 7) MISCELLANEOUS.
- a) These Terms and Conditions and the Work Order contain the entire understanding of the parties with respect to the subject matter hereof and supersede all previous oral and written agreements, contracts or understandings between the parties with respect thereto. Except as set forth herein, there are no other agreements, representations or other warranties with respect thereto. This Agreement may be amended only in a writing signed by the parties hereto. In the event of a conflict between the Terms of the Work Order and the Terms and Conditions, the Terms of the Work Order shall prevail;
  - b) This Agreement shall be governed by and its terms shall be interpreted and enforced in accordance with the laws of the State of New York other than those governing conflicts of laws;
  - c) This Agreement shall be binding upon and shall inure to the benefit of ATLANTIC BULK and Customer and their successors and permitted assigns;
  - d) The headings of this Agreement are for convenience only and shall not be a part of or affect the interpretation of the substantive provisions hereof;
  - e) This Agreement may be signed in multiple counterparts which, together, shall constitute one and the same Agreement;
  - f) Each individual executing this agreement certified that he or she is authorized to execute the same on behalf of the company represented and that upon such execution, this agreement will be binding legal obligation of such company, enforceable in accordance with its laws; and
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