

## Terms and conditions

### *Standard Terms and Conditions for Claims Handling and Correspondent's work*

#### **1. General**

- a. Unless otherwise agreed in writing by Van Ameyde Marine Asia ("VAMA"), the "Appointment Confirmation Advice" and these standard terms and conditions shall constitute the entire "Service Agreement" between the Client and VAMA, inclusive of its directors, employees, network offices, representatives and sub-contractors. The "Appointment Confirmation Advice" may be sent in the form of an email where instructions are being confirmed as accepted. All instructions from the Client are accepted by VAMA solely on these standard terms and conditions contained herein, which override other standard terms and conditions and/or guidelines of the Client (if any), whether incorporated or otherwise. No variation or addition to the standard terms and conditions contained herein shall be binding on VAMA unless such variation or addition are expressly agreed by VAMA in writing.
- b. These Terms and Conditions only for cases where VAMA are appointed as Claims Handlers and/or Correspondents. In cases where VAMA are appointed as surveyors, the work is governed by VAMA's Standard Terms and Conditions for Survey Work.
- c. When instructed by the Client or his insurer to appoint a surveyor or other service provider, VAMA will proceed in accordance with those instructions. All appointments of surveyors / other service providers by VAMA is made for and on behalf of the Client and in making such appointment and giving any instructions, VAMA is acting in its capacity merely as an agent of the Client. The Client shall be the party ultimately responsible and liable for paying all fees, disbursements, taxes and any other payments due to the appointed surveyors / other service providers. Under no circumstances whatsoever shall VAMA be responsible or liable for paying such fees, disbursements, taxes and any other payments.
- d. By instructing and continuing to deal with VAMA in connection with any matter where VAMA is acting on the Client's behalf and as its agent only, the Client is deemed to have read, understood and agreed to clause 1.b above and all these standard terms and conditions contained herein. If you are an intermediary or agent instructing VAMA on behalf of Principals, you undertake to bring these conditions to the attention of your Principals and procure their acknowledgment and agreement to these conditions, in the absence of which you will be responsible for payment of any charges incurred.
- e. All fees quoted by surveyors / other service providers to VAMA are subject to agreement by the Client. However, under urgent circumstances whereby appointment of surveyors / other service providers is made by VAMA upon the instructions of the Client but without the opportunity of agreeing or finalising fees with the surveyors / other service providers in advance, the Client shall be deemed by its instructions and/or conduct to have agreed to pay all fees, disbursements, taxes and any other payments due to the appointed surveyors / other service providers. In the event of any fee disputes arising out of an appointment, the Client will remain responsible for settlement of the fees claimed. VAMA will use its best



endeavours to resolve such disputes amicably and subject to the approval of any compromise by the Client.

## **2. Scope of Work**

- a. VAMA will provide the Services required in accordance with the Client's instructions as confirmed in the "Appointment Confirmation Advice".
- b. VAMA will not vary the scope of the Services unless either instructed to do so by the Client or the circumstances of the attendance require an immediate variation to meet the required objective. Where a variation in the scope of work is either requested or required, VAMA will advise the Client in writing as to the effect this variation will have on the cost and completion date of the Services.

## **3. Performance and Access**

- a. VAMA will provide the agreed Services and will exercise reasonable care and skill at all times.
- b. All technical reports will be produced and transmitted to the Client by VAMA or a VAMA network office.
- c. VAMA shall be entitled to engage any sub-contractors as may be considered necessary and without prior reference to the Client.
- d. The Client will procure all necessary access for VAMA's surveyors inspection of goods, premises, vessels, installations etc. and will ensure that all appropriate measures are taken to provide safe and secure working conditions during such inspection, inclusive of gas freeing and safe entry testing.
- e. VAMA will not be responsible for the consequences of the Client's late, incomplete, inadequate, inaccurate or ambiguous instructions or the unavailability of any vessel or inaccessibility to any part of a vessel or survey site, howsoever occurring, and the Client shall be responsible for any additional attendance charges so incurred.

## **4. Charges (Fees and Disbursements) and Payment Terms**

- a. Attendance, both on site and for work conducted at VAMA's offices, will be charged according to the current hourly or daily rate. Disbursements will be invoiced at cost plus 15% to cover administration and service charges. Office disbursements will be charged at 10% of VAMA's fees subject to a cap of US\$250 or SG\$250, whichever the currency of the invoice is.
- b. VAMA is entitled to charge 1.5 times the applicable hourly or daily rate for work done out of our normal office hours (i.e. weekdays' evening/night, weekends and public holidays, in Singapore) when circumstances require our urgent / immediate actions and/or as required by Clients.
- c. VAMA will provide an itemized breakdown of fees and disbursements except in circumstances where a fixed fee has been agreed in advance.
- d. VAMA reserves the right to request payment on account prior to attendance by presentation of a pro-forma invoice.



- e. All invoices are due for payment within 14 days of the date of issue, unless otherwise pre-agreed by VAMA in writing.
- f. All remittances to VAMA shall be net of all bank charges failing which any deductions in respect of bank charges will be carried forward to a subsequent invoice.
- g. If an invoice is not paid by the due date, VAMA reserves the right to charge monthly interest at 2% above the Base Lending Rate of HSBC Bank, Singapore, as prevailing at the time of demand, on amounts outstanding from the date of issue of the invoice.
- h. VAMA reserves the right to withhold all reports until payment in full has been received into its nominated account and copyright of all such reports and associated correspondence will remain with VAMA until payment is received.

## **5. Liability and Disclaimers**

- a. Any report or advice produced under the terms of the Service Agreement is intended solely for the use of the Client and shall not be further distributed, circulated, published or relied upon by any 3rd party without the express written agreement of VAMA.
- b. All reports which include VAMA's written assessment of the market value of a vessel, cargo or other goods or chattels may only be construed as an expression of the attending surveyor's professional opinion.
- c. While all reasonable efforts will be made to ensure accuracy in respect of the observations and opinions expressed in VAMA's reports and advice, such observations and opinions are provided without warranty, and neither VAMA nor any of its directors, employees, network offices, representatives or sub-contractors shall in any circumstances be liable to any person whatsoever for any act, omission or default in connection with any report's preparation and issuance whatsoever or howsoever arising for any amount exceeding 5 times the fee paid or due from the Client for the agreed services and in any event for no amount exceeding US\$10,000, inclusive of interest and costs. Provided always that any such payment in damages shall only be consequent upon a final and non-appealable judgment by a competent court or tribunal or as agreed between the parties and endorsed by VAMA's professional liability insurers.
- d. VAMA shall not be liable for any damage or loss to the Client if caused by a VAMA employee, network office, representative or sub-contractor during the commission of a criminal act or by way of wilful default or recklessly and with intent to cause loss and any such activity shall not be construed as being an act performed within the scope of such persons employment with or engagement by VAMA.
- e. In respect of any claim arising out of the Service Agreement, if formal proceedings have not been commenced by the Client within 12 months after becoming aware of the circumstances giving rise to the claim, then any such claim shall be extinguished and time barred absolutely.
- f. VAMA shall have no liability to the client if it is prevented from, or delayed in performing, its obligations under the contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without



limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of VAMA or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

## **6. Contingency Cases**

- a. Where VAMA is retained on a contingency/no cure-no pay basis, unless otherwise agreed, VAMA's fee (plus any applicable GST / VAT) will be the agreed percentage of the gross recovery/saving achieved subject to a minimum fee of US\$5,000 payable from first funds received all on a 'no win no fee' basis.
- b. VAMA will be responsible for and pay its/the client's lawyers' fees (excluding disbursements/expenses unless otherwise agreed) but not adverse costs orders made against the client nor will VAMA provide security for costs if requested or if the client is ordered to do so, unless otherwise agreed by VAMA in writing. The client will deal directly with VAMA's appointed lawyers when requested to do so.
- c. VAMA reserves the right to discontinue work on the case if, in its sole discretion, no success is likely to be achieved taking into account the merits of the case, the financial strength of the respondent/paying party and disproportionate legal costs being/likely to be incurred.
- d. VAMA does not undertake to pursue the case to conclusion at any cost. Other grounds for discontinuing work will include but not be limited to:
  - (i) non-payment of funds due in accordance with this agreement within 14 days of a request to do so;
  - (ii) misconduct, imprisonment, fraud or bankruptcy of the client; failure by the Client to provide correct, complete or accurate instructions or information;
  - (iv) breach of these conditions by the client.
- e. VAMA will give the client 10 days' notice (or 4 days' notice if there has been a breach of fee payment terms as above) of any intention to discontinue work on the case. The client will not in these circumstances be responsible for VAMA's fees/expenses (unless otherwise agreed).
- f. If legal costs are paid in addition to any recovered amount, these will be for the credit of VAMA/its lawyers and payable in addition to the fee agreement contained in clause 6.a above and from first received funds.
- g. The client undertakes:
  - (i) to give VAMA/its appointed lawyers or experts instructions, evidence and access to necessary witnesses, all at its cost, when reasonably requested to do so;



- (ii) to give (by agreeing these terms) VAMA irrevocable instructions/authority to deal with the case and to act in accordance with the reasonable recommendations of VAMA to settle or compromise the case;
- (iii) to undertake no direct negotiations with opposing interests (either directly or through an intermediary) without VAMA's written approval and any settlement negotiated will entitle VAMA to recover its fee (and any recoverable lawyers' fees) in full unless notice, in accordance with clause 6.e above, has been given; and
- (iv) to irrevocably agree that any money(ies) recovered from any third party(ies) shall be payable in the first instance directly to the account of VAMA prior to any reconciliation with the client.

## **7. Conflict of Interest**

Where a potential conflict of interest arises, VAMA will, as soon as it becomes aware of the situation, advise all parties immediately and will assist in facilitating an alternative service appointment if so requested to do.

## **8. Severability**

These Standard Terms and Conditions are severable and if any particular provision is held to be invalid or unenforceable by any court or tribunal of competent jurisdiction, then this shall not affect the validity or enforceability of the remaining provisions.

## **9. Law & Jurisdiction**

These Standard Terms & Conditions and any dispute arising out of or in connection with them and the Services agreed shall be subject to the Laws of Singapore and shall be subject to the exclusive jurisdiction of the Singapore Courts provided always that i. the parties shall be bound to first proceed to mediation in Singapore or at any other place agreed by the parties on a consensual basis and ii. in the event that mediation is unsuccessful, the matter shall be referred to arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force.

## **10. Destruction of documents**

At the conclusion of a matter VAMA will review the case file and discard any unnecessary additional copies of documents, then send the balance of the file to an off-site facility for storage at their expense, unless the Client requests that the file be delivered to their offices. To minimise the storage expenses, VAMA reserves the right, subject to the Clients written contrary direction, to retain files for only six years from the completion of the matter and to destroy older files to the extent practical. If the Client wishes the disposition of files to be handled in a different manner, VAMA must be informed in writing.



## **11. Complaints Procedure**

Any client complaints should be directed to the supervising Director of VAMA who will implement the appropriate procedure.

## **12. The VAMA Anti-Bribery and Corruption Policy**

a. VAMA including associated, affiliated and subsidiary companies is committed to carrying out business fairly, honestly and openly and has a zero-tolerance approach to bribery and corruption. VAMA prohibits the offer, promise, giving, solicitation or acceptance of any bribe, whether a financial or other advantage, directly or through a third party:

- (i) to any person or company or public official; or
- (ii) by any individual employee, agent or person who performs services or acts on behalf of VAMA;

in order to illegally or unethically obtain or retain business or an advantage in the conduct of business, or gain a financial or other advantage for VAMA including associated, affiliated and subsidiary companies or for any individual or any person or company connected with that individual.

b. All persons who act on business for VAMA must adhere to this policy and have similar policies in place.