

August 2016

Terms and Conditions of Business

ALBATROSS ADJUSTERS LIMITED

## **1. Definitions**

For the purpose of these terms and conditions of business

- “ALBA” means ALBATROSS ADJUSTERS LIMITED, Limassol (**ALBA**) and includes any partner, director, employee or agent of ALBA or any company controlled by ALBA or any subsidiary or holding company or any officer, employee or agent of such company and any successor of any such company or person.
- “Client” means any party at whose request or on whose behalf ALBA undertakes to provide services and/or carries out an assignment.
- “Report” means any report, advice, opinion, statement, adjustment or recommendation supplied by ALBA in connection with instructions received from the Client.

## **2. Scope**

These terms and conditions of business constitute part of the agreement between ALBA and the Client and apply to all legal relations in addition to all other terms and conditions specifically agreed. In case of conflict, the terms specifically agreed, [expressly or impliedly and or by practice] shall prevail. ALBA shall provide services solely in accordance with these terms and conditions of business. These terms and conditions of business shall prevail notwithstanding any conflict with conditions sought to be imposed by any other party and cancellation, waiver, amendment or variation of any terms of engagement shall only be effective if made in writing specifically for such reason and signed by duly authorized representatives of both parties. The object of the services shall be the performances of certain agreed tasks not the achievement of any specific economic result. Time is not of the essence of ALBA’s performance unless expressly agreed otherwise in writing.

## **3. Responsibility**

ALBA will use reasonable care, diligence and skill regarding the performance of average adjusting, marine claims handling and collection of cash deposit(s) and/or guarantee(s) and in preparing any Report. Any warranties or representations whether express or implied made before ALBA’s engagement are excluded to the extent permitted by law.

## **4. Conflict of Interest/Qualification**

ALBA shall make every reasonable effort to identify and promptly notify the Client of any matter including conflict of interest or lack of suitable qualifications and experience, which would render it undesirable for ALBA to continue its involvement in the services undertaken.

## **5. Liability**

ALBA shall be under no liability whatsoever to the Client for any loss, damage, delay or expense, whether direct or indirect arising from the performance or provision of services howsoever caused, unless same is proved to have resulted solely from the gross negligence or wilful default of ALBA. Any liability of ALBA towards the Client shall in any event not exceed USD 250.000,00 in all. This limit shall apply to all causes of action against ALBA in respect of or arising from or in any way connected in the engagement of ALBA by the Client.

If the Client instructs ALBA on future matters, this clause shall also apply to each such future matter but with the limit from time to time in force, as above. Where instructions on any matter are from joint or several Clients, a single limit as above described will apply to be shared by such Clients.

ALBA shall under no circumstances be liable to the Client for loss of profit, loss of use, loss of business, loss of goodwill or data or for any other consequential indirect loss.

Any Report by ALBA is provided for the Client only and no other person may rely upon such a report. ALBA does not accept responsibility to any third party reliant on the Report in relation to a matter whereby ALBA are instructed by the Client. The Client must not disclose the contents of any Report to any third party without first obtaining the written agreement of ALBA.

The Client shall provide ALBA with all information, instructions and assistance reasonably necessary to enable ALBA to perform its services. The Client further recognizes that ALBA will rely on such information, instructions and assistance when performing the services undertaken and ALBA cannot accept any liability arising from misrepresentation, inaccuracies or errors from information communicated to ALBA by the Client or data which has been concealed which would be considered essential for the quality and accuracy of ALBA's undertaken assignment.

Advice and/or information which is not required by the Client under the applicable agreement and which is provided gratuitously by ALBA will not subject ALBA to any liability whatsoever whether based on contract, warranty, tort, including negligence, or any other ground whatsoever.

ALBA do not act as valuers of ships, cargoes or any other properties. If ALBA are engaged to collect general average, salvage or any other security, ALBA is authorized by the Client to obtain and may rely on valuations and information provided to ALBA by

third parties, which however have not been and will not be subject to independent scrutiny, audit or verification. While ALBA will act in good faith, ALBA cannot accept any liability arising from misrepresentation, inaccuracies or errors in such valuations or information.

ALBA may obtain technical advice from a third party expert, however ALBA makes no representation or recommendation to the Client as to the experience, suitability or competence of this expert and ALBA will have no liability to the Client for the instruction or performance of the expert.

The Client agrees not to bring any claim of any kind in connection with the services against any individual employee of ALBA, any person seconded to ALBA or any agent, consultant, independent contractor or correspondent engaged by ALBA.

## **6. Right to Sub-Contract**

ALBA shall have the right to sub-contract all or part of any services agreed to be provided, subject to the Client's right to discuss such appointment and object on reasonable grounds to the appointment of a specific sub-contractor. In the event of such a sub-contract, ALBA shall remain responsible for the performance of its obligations under these conditions.

## **7. Force Majeure**

Neither ALBA nor the Client shall, except as otherwise provided in these terms and conditions of business, be responsible for any loss, damage, delay or failure in performance hereunder arising or resulting from force majeure, act of God, act of war or terrorism, seizure under legal process, quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint by authorities or people.

## **8. Electronic Communication**

The Client and ALBA may wish to communicate electronically with one another. It is understood by both parties that electronic transmission of information cannot be guaranteed to be (a) secure (b) error free (c) not intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use through no fault of the sender. ALBA and the Client shall use such procedures as they shall deem practicable and appropriate in the circumstances to periodically check for the most recently known viruses before sending information electronically, but it is recognised that such procedures cannot be a guarantee that transmissions will be virus-free. ALBA and the Client shall each be responsible for protecting their own interest in relation to electronic communications.

## **9. Document Retention**

ALBA will retain all correspondence, documents and records that relate to and/or have a bearing on the services provided to the Client for a period of 6 years after completion of the service or the issue of a report, adjustment or statement, whatever is earlier.

The Client will not be entitled to retain any work product or copies of software programs which are the property of ALBA. ALBA will not be entitled to retain copies of any software programs provided by the Client to ALBA which remain the property of the Client.

#### **10. Fees**

The Client shall pay to ALBA all fees, disbursements and expenses due to ALBA within 30 days upon presentation of ALBA's invoice to the Client. Until ALBA receives payment in full for such invoice, ALBA shall have a lien over all Client's money, records, documents and any information in hard copy or stored electronically. ALBA reserves the right to charge interest on an unpaid invoice, at a rate payable on judgement debts, from 30 days after presentation of the invoice.

#### **11. Time Bar**

Subject to the applicable law, any claims made against ALBA shall be deemed to be waived and absolutely time barred upon expiry of 12 months from the submission of the Report to the Client or from the date when the Client's cause of action arose, whatever is earlier.

#### **12. Termination**

ALBA may terminate the engagement, by giving at least 10 business days' notice to the Client, in case the Client is rendered unable to pay its debts or is in receivership, administration or / liquidation or in case the said party is in breach of any of ALBA's terms and conditions of business and having received written notice to such effect requiring said party to remedy such breach within a reasonable time, the party has failed to remedy the breach.

#### **13. Law and Jurisdiction**

The assignment between ALBA and the Client is subject to these terms and conditions of business and shall be subject to Cypriot Law and the exclusive jurisdiction of the Cypriot Courts.

#### **14. Partial Invalidity**

In the event that any of these terms are or become partially or wholly invalid the rest of these conditions will be unaffected. Invalid terms or parts thereof will be replaced and omissions will be filled by corresponding legal provisions.

Limassol, August 2016