



NAWAH Maqal FZE TERMS AND CONDITIONS

Last revised November 2015

A. DEFINITIONS

For the purposes of these Terms and Conditions, the following terms shall have the meanings below:

- (1) **"Agreement"** means the attached Quotation that includes and incorporates these Terms and Conditions.
- (2) **"Cargo"** means the goods and other property provided by Customer to be handled by Company pursuant to Section B (Services).
- (3) **"Collection Point"** is as expressly specified in the Quotation.
- (4) **"Company"** means NAWAH Maqal FZE maintaining offices at JAFZA Building 19, Suite 1501, Jebel Ali, Dubai, UAE.
- (5) **"Customer"** means the customer designated in the Quotation.
- (6) **"Cut-Off Point"** means 24-hours prior to the date of the Cargo's receipt by Company set forth in the Quotation.
- (7) **"Delivery Point"** is as expressly specified in the Quotation.
- (8) **"DIFC"** means the Dubai International Financial Center.
- (9) **"Exchange Rate"** means the currency exchange to the US Dollar as stated in the Quotation.
- (10) **"FCPA"** means the U.S. Foreign Corrupt Practices Act.
- (11) **"Price"** means the price set forth in the Quotation.
- (12) **"Services"** means the services described in the Quotation and in Section B.
- (13) **"Validity"** means the period when this Quotation is valid and not yet expired.

B. SERVICES

- (1) **Scope of Services:** Company shall be responsible for: receipt of the Cargo from Customer or its authorized representative at the Collection Point; transportation of the Cargo by sea to the Port of Basra (Al Maqal Port), Iraq; hand-over of the Cargo to Customer or its authorized representative at the Delivery Point.
- (2) **Changes in Scope of Services:** GRI/Revisions/Surcharges/Out port additional charges are subject to change with/without notice and will be charged as applicable at the time of shipment.
- (3) **Right to Refuse:** Company reserves the right to refuse a Cargo if:
 - (i) Cargo is likely to cause delay or damage to other cargos, shipments, equipment or personnel;
 - (ii) Cargo is prohibited or restricted by law;
 - (iii) Cargo violates any provision of the Agreement;
 - (iv) Customer fails to provide a complete and accurate description of the Cargo pursuant to Section E(1)(Description of Cargo); or
 - (v) Customer fails to provide timely notices of changes pursuant to Section G(1)(Request for Changes).

C. PRICE AND PAYMENT TERMS

- (1) **Price:** In consideration for the performance of the Services, Customer shall pay Company the Price upon the terms provided in the Quotation and herein.
- (2) **Bank Details:** All payments to Company shall be made to:

Bank: Emirates NBD
Swift: EBILAEAD

- (3) **Currency:** Unless otherwise agreed in writing, all payments to Company shall be made in US Dollars to:

USD Account
Account Number : 1024750842202
IBAN : AE910260001024750842202
Account Name : NAWAH MAQAL FZE
Account Currency : US DOLLARS

- (4) If Company agrees to be paid in AED, payments to Company shall made to:

AED Account
Account Number : 1014750842201
IBAN : AE830260001014750842201
Account Name : NAWAH MAQAL FZE
Account Currency : UAE DIRHAM

- (5) For any payment made in a currency other than US Dollars, payments shall be made at the US Dollar equivalent Exchange Rate stated in the Quotation.

D. CUSTOMS DUTY, LEVIES, TAXES AND OTHER FEES

- (1) Unless otherwise provided in the Quotation, Company shall not be responsible for (i) paying, or obtaining any exemptions for, customs duty, levies, and taxes; and (ii) paying any storage fees or demurrage at either Jebel Ali Port (port of loading) or Port of Basra (port of discharge).
- (2) If Company's Quotation includes delivery service to Customer's site, Customer is solely responsible for obtaining all destination gate passes necessary for delivery of Cargo.
- (3) If Company's Quotation does include paying, or obtaining or exemptions for, customs duty, levies, and taxes on Customer's behalf, payment to Company in advance of Services is required.

E. CARGO

- (1) **Description of Cargo:** Customer shall provide Company a complete and accurate description of the Cargo, including but not limited to:
 - (i) type of the Cargo;
 - (ii) list of items and quantities;
 - (iii) dimensions of the Cargo;
 - (iv) content of the Cargo;
 - (v) value of the Cargo in US Dollars;
 - (vi) a statement as to whether the Cargo is hazardous or dangerous pursuant to the International Maritime Control Organization rules or otherwise;
 - (vii) any special handling requirements; and
 - (viii) if applicable, type of customs clearance required to be performed by Company and any information necessary to ensure the Cargo's clearance.
- (2) **Failure to Provide Complete and Accurate Description:** Without prejudice to Company's rights under Section B(3)(Right to Refuse) and Section L(Indemnification), in the event that Customer fails to provide a complete and accurate description of the Cargo pursuant to Section E(1)(Description of Cargo):
 - (i) Customer may have to pay extra charges to Company;
 - (ii) delivery of the Cargo may be delayed; and
 - (iii) Company shall not be responsible to Customer, its affiliates, employees, agents or representatives for any damages, loss, expenses (including attorneys' fees), liability or claims resulting therefrom.
- (3) **Cargo Packing and Suitability:** Customer shall be solely responsible for ensuring that the Cargo has been properly packed and that it is suitable for the chosen method of transport.
- (4) **Consent to Cargo Searches:** On behalf of Customer and all others with an interest in the Cargo, Customer consents to a search of any Cargo if and as required by any governmental authority or Company.
- (5) If Company's quotation includes delivery to Customer's site and that delivery includes the transfer of custody of Company's containers to Customer on a temporary basis, Company may collect a deposit for each container and Customer will be solely responsible for any damage to containers, beyond normal usage.

F. DOCUMENTATION

- (1) **General Documentation:** Customer shall provide to Company any and all relevant documentation necessary to complete service in a timely manner including, but not limited to, Shipping Declarations and Bills of Lading.
- (2) **Documentation When Company is Providing Clearance Service (in Iraq):** If Company's Quotation includes Clearance Services, Customer shall provide to Company, at least 72 hours before the Cut-Off Point, all documents relating to Cargo in original hard copies, including but not limited to:
 - (i) Shipping Declaration and
 - (ii) Bill of Lading (within 24 hours of vessel departure)
 - (iii) Invoice;
 - (iv) Certificate of Inspection;
 - (v) Packing List;
 - (vi) Certificate of Origin; and
 - (vii) Certificate of Conformity.
- (3) **Special Documentation:** Customer shall provide to Company at least five (5) working days before the Cut-Off Point all special documents relating to the Cargo [in original hard copies], including but not limited to:
 - (i) documents relating to the duty, taxes, or levies or to the exemptions therefrom;
 - (ii) the Material Safety Data Sheet;
 - (iii) any additional International Maritime Control Organization documentation necessary; and

(iv) any required governmental approvals.

- (4) **Approval by Company:** Promptly after receipt, Company shall send Customer a notice either confirming the completeness of the documentation provided pursuant to Section F(1)(*General Documentation*) and Section F(3)(*Special Documentation*) or advising on any deficiency thereof. Such notice shall not release Customer from any responsibility with respect to its failure to comply with any of its obligations hereof.
- (5) **Records:** Customer understands and agrees that Company may be required to maintain, in accordance with applicable laws, copies of the documentation provided pursuant to Section F(1)(*General Documentation*) and Section F(3)(*Special Documentation*).

G. NOTICES OF CHANGES

- (1) **Request for Changes.** Customer shall provide Company, at least 72 hours before the Cut-Off Point, with a written notice describing any requested changes to:
- Cargo's description provided pursuant to Section E(1)(*Description of Cargo*);
 - If applicable, Cargo's duty, levies and taxes; or
 - Documentation provided pursuant to Section F(1)(*General Documentation*) and Section F(3)(*Special Documentation*).
- (2) **Late Notice.** Without prejudice to Company's rights under Section B(3)(*Right to Refuse*) and Section L(*Indemnification*), in the event that Customer fails to provide timely notices of changes pursuant to Section G(1)(*Request for Changes*):
- Customer will pay extra charges to Company;
 - Delivery of the Cargo may be delayed; and/or
 - Company shall not be responsible to Customer, its affiliates, employees, agents or representatives for any damages, loss, expenses (including attorneys' fees), liability or claims resulting therefrom.

H. INSURANCE

- (1) **No Insurance by Company:** Insurance of cargo is not included in our scope of work/rate; insurance should be arranged by shipper/consignee.

I. CUSTOMER REPRESENTATIONS AND WARRANTIES

- (1) Customer represents, warrants and undertakes, as the case may be, to Company that:
- Customer is either the beneficial owner or authorized representative of the beneficial owner of the Cargo;
 - Customer shall not cause and is not causing Company to transport or handle property, to the best of Customer's knowledge, prohibited by the laws or regulations of any country to be transported from, to, or through, including stopping places;
 - Customer has secured or shall secure all necessary permits, franchises, licenses or other authorizations required to lawfully effect the transport, export and import of the Cargo; and
 - Customer shall at its own expense, comply with the laws and regulations described in Section J(*Compliance*) and any other applicable laws, regulations, rules, acts or orders of any governmental authority with jurisdiction over the Services, the Cargo, Customer or Company in connection with the Agreement. Upon Company's written request, Customer shall furnish to Company any information required to enable Company to comply with the laws and regulations applicable to Company or its affiliates relating to the Cargo or the Services.

J. COMPLIANCE

- (1) **Anti-bribery:** Customer acknowledges that it is familiar with and understands the provisions of FCPA and in particular the provisions relating to FCPA's prohibitions regarding the payment or giving of anything of value, either directly or indirectly, to a government official or political party official for the purpose of influencing an act or decision in his official capacity or inducing the official to use his or his party's influence with that government, as well as any similar or equivalent provisions of any applicable laws. Customer agrees to comply with the laws referenced in this Clause in connection with the Services and the Cargo.
- (2) **Import and Export Control Laws:** Customer acknowledges that the Cargo is subject to the import and export control laws and regulations of Iraq, the U.A.E. and the country or countries where the goods and other property in the Cargo are manufactured.
- (3) **Sanctions:** Customer acknowledges that the Cargo may not be sold, leased or otherwise transferred to, or utilized by, persons or entities subject to an asset freeze or other sanctions (including those on the U.S. Specially Designated Nationals Lists and other lists of blocked parties) or to countries currently embargoed by the United States (currently Cuba, Iran, North Korea, Sudan, and Syria).

K. CUSTOMER DEFAULT

- (1) **Late Fees:** Unless otherwise agreed in writing, a late fee of one point five per cent (1.5%) every 30-day period (and a pro-rated amount for any partial period) shall be paid by Customer to Company for late payments.
- (2) **Costs of Collection:** In any dispute involving monies owed to Company, Company shall be entitled to claim payment of all costs of collection (including reasonable attorney's fees), in addition to the late fees provided in Section K(1)(*Late Fees*).
- (3) **Lien on Customer Property:** Company shall have a general and continuing lien on the Cargo and any and all property of Customer coming into Company's actual or constructive possession or control for monies owed to Company. Company shall promptly provide written notice to Customer of its intent to exercise such lien, the amount of monies due and owing, as well as any on-going storage or other charges, including the costs of collection provided in Section K(2)(*Costs of Collection*) and the late fees provided in Section K(1)(*Late Fees*). Promptly upon receipt of such notice, Customer shall notify all parties having an interest in the Cargo or such Customer's property of Company's rights and its exercise of such lien.
- (4) **Right to Sell Customer Property:** Unless Customer provides to Company, within thirty (30) days after receiving Company's notice of exercise of lien pursuant to Section K(3)(*Lien*) above, (i) cash, (ii) a letter of credit at sight, or (iii) if the amount due is in dispute, an acceptable bond equal to one hundred and ten percent (110%) of the total amount due in favor of Company guaranteeing payment of the monies owed and all storage charges accrued, Company shall have the right to sell Customer's property referred to in Section K(3)(*Lien*) above at any public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.

L. INDEMNIFICATION

- (1) Customer shall indemnify, hold harmless and defend Company, its affiliates, employees, agents or representatives from and against any and all damages, loss, expenses (including attorneys' fees), liability, claims, penalties or fines arising from (i) the Cargo, (ii) Customer's breach of the representations, warranties and covenants contained herein or (iii) any conduct of Customer in relation to the importation or exportation of the Cargo. In the event that any claim, suit or proceeding referred to in the preceding sentence is brought against Company, it shall give prompt written notice of same to Customer by courier at its address on the Quotation.

M. COMPANY'S LIABILITY

- (1) **Period of Responsibility:** Company's period of responsibility shall begin and end based on shipping declaration/instructions provided in writing by Customer.
- (2) **Liability During Sea Transportation:** Company's liability to Customer in the event of damage to, or loss of, the Cargo between the loading of that Cargo on Company's relevant chartered vessel and its off-loading therefrom shall be governed by the U.A.E. Maritime Law.
- (3) **Liability During Ground Transportation (if applicable according to the Quotation):** Notwithstanding anything in the Agreement to the contrary, the aggregate liability and indemnification obligation of Company in the event of damage to, or loss of, the Cargo during the ground transportation of that Cargo, if applicable according to the Quotation, shall be limited to the Price.

N. CUSTOMER'S LIABILITY

- (1) **Non-Provision of Documents:** Customer will be responsible for paying all demurrage and/or storage costs associated with Cargo for which Documentation, as described in Section F herein, is either not provided to Company, is incomplete/insufficient, and/or contains discrepancies.
- (2) **Intentional and/or Negligent Packing:** Customer will be responsible for paying Company for any and all damages, fines, penalties, or other economic harm caused by the intentional and/or negligent packing of Customer's cargo.

O. MAKING A CLAIM

- (1) Customer shall notify Company in writing of any claim, providing details thereof, within three (3) working days after reasonable discovery of any loss of, or damage to, the Cargo. Customer hereby waives its claim unless it gives notice to Company within the time limits stated in this Clause. The parties agree that any legal action, arising out of, in connection with, or relating to the Agreement shall be formally commenced no later than one (1) year following the date upon which Company received the Cargo into its possession.

P. GOVERNING LAW AND DISPUTE RESOLUTION

- (1) The Agreement shall be interpreted, construed, applied and enforced in accordance with and governed by the laws of the U.A.E. Any dispute or disagreement between the parties arising out of or in connection with the Agreement shall be finally settled under the Arbitration Rules of the DIFC LCIA Arbitration Centre. The seat of the arbitration shall be the DIFC. The parties each unconditionally and irrevocably agree that an award by the duly appointed arbitrators in any arbitral proceedings pursuant to the provisions of this Section O shall be final, non-appealable and binding upon it and may be enforced in any court of competent jurisdiction.

Q. MISCELLANEOUS

- (1) **Confidentiality:** Each party undertakes to keep confidential any and all current and future pricing information, financial information, contracts, practices, procedures and other business information that may be disclosed to such party by the other party, whether written, oral, electronic or otherwise, or information which by its nature is clearly confidential, however and wherever acquired.
- (2) **Force Majeure:** Company shall be entitled to, at its discretion, suspend the performance of the Services or terminate the Agreement and shall not be liable to Customer for failure to meet its obligations under the Agreement if Company is prevented from or delayed in the performance of its obligations due to any circumstances beyond the reasonable control of Company, including but not limited to acts of God, war on land or sea, terrorism, riot or insurrection, government agency/state company action or inaction.
- (3) **Assignment and Subcontract:** At its discretion, Company may assign, without Customer's consent, all or part of its rights and obligations under the Agreement to its affiliates or choose to perform the Services or any part thereof itself, by its own employees or agents or by independent subcontractors.
- (4) **Amendments:** The Agreement may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.
- (5) **Severability:** In the event any provision hereof is found to be invalid, illegal or unenforceable in any respect under a final Court decision, then in such event such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof.
- (6) **Waiver:** Any waiver of a breach or right under this Agreement shall be in writing and signed by Company, and if Company waives a right in writing, such waiver shall not constitute a waiver of any other right or of a subsequent infringement of the same right that has been waived.
- (7) **Entire Agreement:** The Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements or understanding between them concerning such subject matter.