

# STANDARD TRADING TERMS

applicable to and valid for supply of services/goods to all divisions and companies within Manica Group Namibia comprising:

- Rennies Consolidated
- Rennies Transport and Materials Handling
- Ocean Liner Services
- Lubrication Specialists (Pty) Ltd
- Lüderitz Bay Shipping and Forwarding
- Orca Marine Services
- Monjasa Namibia (Pty) Ltd
- Walvis Bay Airport Services
- Woker Freight Services (Pty) Ltd
- Lüderitz Bulk Terminal (Pty) Ltd
- Walvis Bay Stevedoring Company (Pty) Ltd

## 1. Definitions

In these Conditions the words set out hereunder shall have the meanings assigned to them hereunder, unless the context clearly indicates the contrary:

1.1. **Services** – any services supplied by the Supplier to MGN;

1.2. **Goods** – any goods supplied by the Supplier to MGN;

1.3. **Supplier** – \_\_\_\_\_

with registration number \_\_\_\_\_ and principal place of business at

\_\_\_\_\_ ; and

1.4. **MGN** – Manica Group Namibia (Pty) Ltd with registration number 06/00306/07 and subsidiaries mentioned above, with principal place of business at 2 Third Street, Walvis Bay, Namibia

## 2 Interpretation

2.1 Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not modify or affect the interpretation of these standard terms and conditions.

2.2 Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and *vice versa* and words relating to natural persons shall include associations of persons having corporate status by statute or common law.

2.3 The rule which serves to restrict the meaning of general words to things or matters of the same kind as the preceding particular words (*eiusdem generis*) shall not apply, and whenever a term is followed by the word “including” which is then followed by specific examples, such examples shall not be construed as to limit the meaning of that term.

2.4 The rule of construction that the standard terms and conditions shall be interpreted against the party responsible for the drafting or preparation of this Agreement shall not apply.

- 2.5 These Conditions shall be interpreted and applied in accordance with Namibian law and under the jurisdiction of the Namibian courts.

### 3 Application

- 3.1 All and any Business undertaken or provided to MGN is subject to these Conditions as updated from time to time.
- 3.2 In so far as the provisions of any written agreement between the Parties are inconsistent with these Conditions, the provisions of these Conditions shall prevail. Any standard trading terms of the Supplier, whether printed on the reverse of quotes, purchase order, invoices or otherwise, are specifically excluded.
- 3.3 No award of business to the Supplier shall be construed as a guarantee that any future work will be awarded of the same scope or at all. No guarantee is given of any volume.
- 3.4 No supply of Services or Goods may be subcontracted to any third party without the written consent of MGN. In any event, where supply of Services or Goods is outsourced, the Supplier will remain liable to MGN and carry the risk of loss and insurance as if he himself performed the Services or supplied the Goods and will be responsible for ensuring that the Services are carried out in compliance with all statutory requirements.
- 3.5 The relationship between the Parties is a contract of service and does not constitute a contract of agency, representation, employment or partnership.

### 4 Remuneration

- 4.1 MGN shall pay the rates as agreed and signed off by both Parties to the Supplier.
- 4.2 No additional charges shall be accepted unless agreed in advance, reduced to writing and signed by both Parties.
- 4.3 In the case of an ongoing relationship, the Parties shall negotiate annually and in good faith to agree any amendment to the rates. The existing rates shall remain in place with no retrospective increase until agreement is reached.

### 5 Payment

- 5.1 The Supplier shall invoice MGN monthly.
- 5.2 Invoices shall be due for payment 30 days from date of statement.
- 5.3 In the case of the supply of Services, the Supplier shall not be entitled for any reason whatsoever to exercise a lien over any goods in its possession which belong to MGN or MGN's clients.

### 6 Liability

- 6.1 The Supplier indemnifies MGN against any liability which MGN may incur as a result of any claim against MGN by any client, authority or other third party in respect of loss, injury or damage directly arising from acts or omissions of the Supplier in negligently performing its obligations in terms of these Conditions or arising from use of the Goods supplied.
- 6.2 Neither party shall be liable for any claim of whatsoever nature, whether for damages or otherwise and howsoever arising unless such claim arises from a negligent act or omission by it or its employees.
- 6.3 Neither party shall be liable for any special damages, indirect or consequential loss howsoever arising from any act or omission by it or its employees, whether negligent or otherwise.
- 6.4 In the case of supply of Goods, risk in and to the Goods shall pass on physical delivery to MGN or on such later date as may be agreed between the Parties in writing.

### 7 Insurance

- 7.1 The Supplier will obtain policies of insurance in its own name to cover its potential liability to MGN in the course of carrying out the Services or supplying the Goods.
- 7.2 Any failure to procure adequate insurance shall not affect the Supplier's liability in terms of these Conditions or any agreement between Parties.
- 7.3 Upon request, Supplier will furnish the MGN with a Certificate of Insurance evidencing appropriate insurance coverages are in place. A failure to request evidence of insurance shall not be construed as a waiver of Supplier's obligation to provide appropriate insurance.
- 7.4 The Supplier must provide MGN with proof of renewal of cover annually. In addition, the Supplier is obliged to notify MGN whenever there is any material change to the conditions of its insurance cover.

### 8 Claims

- 8.1 As soon as is reasonably practical after MGN becomes aware of any event or circumstance which may give rise to a claim against the Supplier, MGN shall give the Supplier written notice of such event or circumstance, and the relevant facts known to it, to enable the Supplier to investigate the matter.
- 8.2 The Parties undertake to co-operate with, and to give all reasonable assistance to each other to enable any incident or claim to be fully investigated.

## 9 Warranty

- 9.1 In case of the supply of Goods, the Supplier warrants to MGN that, at the time and place of delivery to MGN, all Goods will be fit for the purpose intended, merchantable, and free from all defects, and comply with all Laws relating to the production, distribution, and sale of the Goods.

## 10 Termination

- 10.1. Unless otherwise agreed in a separate written agreement, either Party may without cause terminate this Agreement on one month's written notice to the other Party.
- 10.2. If, at any time during the duration of this Agreement, either Party hereto shall be placed in business rescue, voluntary or compulsory sequestration or liquidation or under judicial management or seeks to make a compromise with its creditors, the other Party shall have the right to terminate this Agreement forthwith on written notice to the trustee or liquidator or judicial manager or business rescue practitioner as the case may be.
- 10.3. In the event of either Party breaching any of its obligations under this Agreement, which breach is capable of being remedied, and such Party failing to remedy such breach within a period of 14 days of receipt of written notice from the aggrieved Party calling upon it to do so, the aggrieved Party shall be entitled to cancel this Agreement; or to claim specific performance in either event without prejudice to the aggrieved Party's rights to claim damages or to claim such other remedy to which it may be entitled.
- 10.4. On termination, any claim for payment of outstanding amounts charges must be submitted in writing to MGN within 30 calendar days of receipt or acknowledgement of written notice of termination. MGN shall have the right to audit all elements of the termination claim, and Supplier shall make available to MGN on request all books, records and papers relating thereto. For the avoidance of doubt and notwithstanding the foregoing, MGN shall not by reason of the lawful termination of this order be liable to Supplier for compensation, reimbursement or damages on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, leases or commitments in connection with the business or goodwill of Supplier.

## 11. Dispute Resolution

- 11.1. The Parties shall negotiate in good faith with a view to settling any dispute arising out of or relating to This agreement. For the purposes of this clause, a dispute will not include an unpaid account where there is no valid reason therefore.
- 11.2. If the dispute cannot be resolved, it will be referred to the Managing Director or Chief Executive Officer (or

such other Director as designated by the foregoing) of each Party for determination, who will meet within 14 days of the referral.

- 11.3. If the dispute cannot be resolved within 14 days of this meeting, it may be referred for resolution by arbitration in terms of in accordance with applicable Namibian arbitration laws and more specifically the Arbitration Act 42 of 1965 or any statutory modification or re-enactment thereof to the extent necessary to give effect to the provisions of this Clause.
- 11.4. The arbitrator or arbitrators shall be appointed by agreement by both Parties, and failing such agreement, by the President of the Law Society of Namibia.
- 11.5. The arbitrator shall decide the matter submitted to him according to what he considers just and equitable in the circumstances, which shall include the aspect of costs of the arbitration and, therefore, the strict rules of law need not be observed or taken into account by him in arriving at his decision, subject thereto that any decision requiring the application of law shall be determined in terms of Namibian law
- 11.6. The Parties irrevocably agree that the decision in the arbitration proceedings shall be final and binding on the Parties, shall be carried into effect by all the Parties, and may be made an order of any court of competent jurisdiction in Namibia. All arbitration proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed, except as necessary to obtain court confirmation of the arbitration award.

## 12. Compliance

- 12.1. The Supplier will perform the Services/supply the goods in compliance with all relevant legislation requirements including but not limited to, the Labour Act, 2007, Environmental Management, 2007, Road Traffic and Transport Act, 1999, Public and Environmental Health Act, 2015, Prevention and Combating of Pollution at Sea by Oil Act, 1981 and the Water Act, 1956 (SA).
- 12.2. Further to the above, he Supplier undertakes to: (a) not use child labour; (b) not use forced, bonded, prison, military or compulsory labour; (c) allow freedom of association and collective bargaining; (d) all applicable non-discrimination and equal opportunity laws; (e) applicable work hours and overtime laws; (f) health and safety laws; (g) environmental laws including, and in particular.
- 12.3 The Supplier must comply with any legislation applicable to either or both Parties, including but not limited to strictly complying with the letter and spirit of applicable local and international free competition and anti-corruption laws and regulations including but not limited to the following: Anti-Corruption Act, 2003, Prevention of Organised Crime Act, 2004, Financial

Intelligence Act, 2012, Competition Act, 2003, Prevention and Combating of Terrorist and Proliferation Activities Act, 2014, OECD Convention on Combating Bribery of Foreign Public Officials, the UK Bribery Act and the US Foreign Corrupt Practices Act.

- 12.4. The Supplier represents and agrees that it, its affiliates, owners, directors, officers, employees, agents, representatives, intermediaries, subcontractors and service providers have not and will not engage in any communication, agreement or other form of co-ordination or co-operation with any competitor that is unlawful or otherwise restricted or prohibited in its dealings with MGN.
- 12.5. The Supplier, its affiliates, owners, directors, officers, employees, agents, intermediaries, subcontractors and service providers will not pay money, promise to pay money, authorise to pay money or offer or promise anything of value to a person in a position of trust to unduly influence the judgement or conduct of that person. There are no exceptions for small amounts or "facilitation" or "grease" payments. A person in a position of trust includes any public official, political candidate, political party, party official and private section employee or individual.
- 12.6 The Supplier represents and agrees that its owners, directors, officers, employees, agents, subcontractors and service providers do not have any personal relationships which might unduly influence the services provided to MGN.
- 12.7 The Supplier agrees that it will systematically implement adequate measures and controls ensuring full compliance with the applicable anti-corruption laws and the commitments made in this agreement by its employees, agents, intermediaries, subcontractors and service providers.
- 12.8 The Supplier agrees that it will not in connection with any services provided to MGN transfer anything of value, directly or indirectly, to any government official, employee of a government-controlled company, political party, or other private (non-government) persons or entities working on behalf of any government in order to obtain any improper benefit or advantage nor shall any facilitation payments be made.
- 12.9 The Supplier will keep accurate books, accounts and records related to MGN business. The Supplier agrees to make available for review its records and other documentation, and for interviews its owners, directors, officers, employees, agents, intermediaries, subcontractors and service providers relating to the services provided to MGN.
- 12.10 MGN shall be entitled to audit the Supplier for compliance to the relevant legislation, this Agreement and any other MGN requirements at any time on reasonable notice to the Supplier costs related to the audit shall be for MGN's account. In the event any such audit indicates inaccuracies or a violation of this Agreement, relevant legislation or any other MGN

requirements by Supplier, and any or all of such inaccuracies or other violation result in a cost to MGN, in addition to MGN's rights of recovery of such costs, Supplier shall be responsible for the reasonable costs associated with such audit.

- 12.11 MGN does not engage in or condone any anti-competitive or corrupt behaviour in relation to any services provided to MGN. Should MGN in good faith believe a breach of this nature has occurred or may occur, MGN shall be entitled to suspend all services and / or terminate any contractual arrangements with the Supplier in whole or on part with immediate effect.
- 12.12 The Supplier undertakes and agrees not to engage in any business, deal with, or in any way, directly or indirectly, be associated with Sanctioned Parties or Embargoed countries and to provide immediate written notice upon the occurrence of any event that would result in a breach of this clause.
- 12.13 During the supply of the services, the Supplier represents and warrants that it is not (a) a Sanctioned Party in terms of applicable trade sanction laws and regulations; (b) owned or controlled by, or acting on behalf of a Sanctioned Party; or (c) directly or indirectly owned, controlled by, or acting on behalf of the government of any country, or an agency or instrumentality of the government of any country that are in itself subject to trade sanctioned or local government embargo.
- 12.14 The Supplier undertakes to perform the proposed services/supply the goods to the satisfaction of MGN and with all due care and diligence, in a good and workmanlike manner, in accordance with good industry practice and without undue delay or interruptions and warrants that it will take responsibility for the acts and omissions of its employees and sub-contractors, whether acting within the scope of their authority or not as if such acts or omissions where it's own.
- 12.15 Without additional expense to MGN, the Supplier will be responsible for obtaining any necessary licenses, permits and approvals, and for complying with all applicable codes, laws and regulations applicable to the Goods and/or Services to be provided pursuant hereto. The Supplier will furnish to MGN, upon request, copies of all such licenses, permits, approvals or other documents.

## 13 Anti-Corruption Indemnity

The Supplier hereby indemnifies and holds MGN harmless from any costs, payment of interest, fines or other liabilities (including loss of profit and/or business due to reputational damage) incurred in connection with or arising from the investigation of or defence against any judicial, administrative or other legal proceedings brought against MGN as a result of acts or omissions by the Supplier or any of the Representatives, in violation or breach of any anti-



corruption or Bribery Laws.

## 14 Force Majeure

- 14.1 A Party shall not be liable for a failure to perform any of its obligations hereunder due to a *force majeure* event (which includes but is not limited to war, civil war, civil violence, riots, revolutions, acts of piracy, acts of sabotage, terrorism, sabotage, natural disasters, pandemic, destruction by lightning, explosions, fires, destruction of installations, industrial action or strike, changes of law, acts of Authority, whether lawful or unlawful) that is beyond its reasonable control and that it could not reasonably be expected to have taken into account at the time of the conclusion of these Conditions or any agreement between the Parties, provided that the Party subject to the force majeure event shall give prompt notice to the other Party of its nature and estimated duration.
- 14.2 Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the Party seeking relief gives notice of the force majeure event relied upon and shall terminate upon the date which such event ceases to exist.
- 14.3 The Parties hereto shall co-operate and collaborate and use all reasonable efforts to overcome the force majeure event concerned and/or nullify its effect.
- 14.4 If the *force majeure* event substantially or permanently prevents the continued performance by either Party of its obligations in terms of these Conditions or any agreement between them for a period exceeding 30 consecutive days, then either Party shall be entitled, by giving notice in writing, to terminate the said agreement with effect from 7 days after giving of such notice.

## 15 Confidentiality & Restraint

- 15.1. Each Party agrees to treat as strictly confidential the operations, business and affairs of the other Party and not to divulge any information relating thereto to any third party, agent or employee, save as required by law, in respect of the execution of these Conditions or agreement between them, whether prior to, during or after the currency of these Conditions or the said agreement.
- 15.2. All documentation furnished by one Party to the other Party pursuant to these Conditions or any agreement between them will remain the property of that Party and upon the request of that Party will be returned to it.
- 15.3. Each Party acknowledges that all right, title and interest in and to any information which the other Party has an interest in being kept confidential vests in that Party and that neither Party has any claim of any nature in and to the confidential information of the other Party.

- 15.4. The Parties shall only process each other's personal information, that of their employees or Customers in accordance with the requirements of applicable protection of information legislation, including, but not limited to Protection of Personal Information Act, 4 of 2013 and General Data Protection Regulation (EU GDPR) where applicable.
- 15.5. All intellectual property rights of any nature whatsoever whether capable of registration or not (and whether registered or not) in either Party's name including but not limited to either Party's trademarks, logos and images shall remain the sole property of that Party. The other Party shall not acquire any rights in relation thereto and shall not make any use thereof without formal written consent.
- 15.6. The Supplier agrees and undertakes in favour of MGN that it will not, during the course of this Agreement and for six months following its termination, hold direct discussions or enter into direct agreements with any of MGN's Customers without MGN's knowledge and consent.
- 15.7 The confidentiality obligations contained in this clause shall survive the business relationship between the parties and shall apply for a minimum of five years after expiry of the business relationship.

## 16. General

- 16.1. No amendment or variation of these Conditions or any agreement between the Parties shall be of any force or effect unless reduced to writing and physically signed by two duly authorised representatives of MGN. Whilst correspondence for operational reasons may occur via email, no formal amendment or variation may be concluded via email.
- 16.2. No failure, refusal or neglect by a Party to exercise any rights under these Conditions or any agreement between the Parties, or to insist upon strict compliance with or performance of another Party's obligations under these Conditions or such agreement, shall constitute a waiver of the provisions of these Conditions or such agreement or of any of that Party's rights. A Party may at any time require strict compliance with the provisions of these Conditions or any agreement between the Parties, and shall not be prejudiced or estopped from exercising any of its rights which may have arisen in the past or may arise in the future.
- 16.3 Each of the provisions of these Conditions and any agreement between the Parties shall be considered as separate terms and conditions. In the event that these Conditions or any such agreement are affected by any legislation or any amendment thereto, or if their provisions are by virtue of such legislation or otherwise held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions shall remain in full force and

effect as if such illegal, invalid, prohibited or unenforceable provision was not a part of these Conditions or any agreement between the Parties.

- 16.4 The Supplier agrees to take all reasonable electronic security measures to prevent unauthorized access, loss of data, spread of viruses or any other cybersecurity threats including by protecting passwords and other log-in information. Should an unauthorized use be suspected, such suspicion shall be communicated to MGN immediately.
- 16.5 Neither Party may cede or assign any of its interest in, or its rights and obligations deriving from, these Conditions or any agreement to any third party without the other party's prior written consent, except for a cession or assignment made as part of an internal reorganization of either party, which will not affect their shareholding.
- 16.6 The Party's *domicilia citandi et executandi* for all purposes under this Agreement shall be as set out in clause 1 hereof.

- 16.7 Any party shall be entitled to change its *domicilium* by way of written notice to the other specifying its new *domicilium* provided that such new address shall be a street address within the Republic of Namibia. All notices by one Party to the other shall be delivered, to the chosen *domicilium citandi et executandi* of the addressee and shall be deemed to have been received on the date of delivery or dispatch unless the contrary is proved. Copies of all notices shall in addition be emailed to the relevant Party on the email address most recently provided.
- 16.8 No agent of, or person employed by MGN, has any authority to alter or vary in any way these conditions unless he is expressly authorised in writing to do so by two duly authorised representatives of MGN. Any agent of, or person employed by the Supplier who enters into an agreement with MGN will be deemed to do so on behalf of the Supplier and with his authority.

Signed at ..... on this .....day of .....20.....

**The Supplier:** .....

Name:.....

Designation:.....