



Standard Terms & Conditions for Shipbroking Services

These Terms and Conditions apply to all dealings between Client and FIS PHYSICAL LTD (“FIS”) (“Broker”) and its Affiliated as well as Associated companies and will be effective whenever you request the Broker to provide Services, or a Client responds to the Broker in relation to the provision of Services. These Terms and Conditions create a legally binding agreement between Client and the Broker, (Client, Broker and Services are defined below).

The Client’s attention is particularly drawn to the provisions of the “Limitation of Liability” clause which contains provisions which exclude or limit the Broker’s liability.

1. Definitions

In these Terms and Conditions, the following definitions apply:

“Applicable Laws”: all laws, regulations, or directives applicable to the Services, including sanctions imposed by the European Union, the United Nations, or the United States, and laws concerning anti-money laundering, bribery, and corruption.

“Affiliates” means any entity that is part of the same group as the Company, as defined under Section 1161 of the Companies Act 2006 including an associated undertaking as defined under Section 1162 of the Companies Act 2006.

“Broker”: FIS Physical Ltd and and/or any of its Affiliates or Associated companies with whom the Broker engages for the provision of the Services.

“Client”: means the person who requests Services from the Broker or responds to the Broker in relation to the provision of the Services. Where such party is acting as a Representative, references in these Conditions to the Client will also include the Principal.

“Fixture”: means a contract or contracts including but not limited to the sale, purchase, construction, towage or charter of a Ship together with negotiations to enter such contracts.

“Negotiations”: means exchanges, whether verbal or in writing, in relation to concluding a Fixture.

“Post Fixture Services”: means assistance with communications, operational matters and claims arising from the performance of a Fixture.

“Principal”: means a party to a Fixture including, but not limited to, the owner, seller, buyer, builder or charterer of a ship and any party guaranteeing the obligations of such a party. Principal may include You.

“Representative”: means a person or company, including but not limited to a ship manager, chartering department, shipbroker or other agent, who is not a Principal but is involved in negotiations on behalf of a Principal.

“Services”: means the Services referred to in clause 2 of these Terms and Conditions.

“Ship”: means any type of ship, other vessel and/or equipment used or intended to be used for any purpose on, in or over water including but not limited to rigs, jack ups, submersibles, and barges.

The headings used in these Conditions are for convenience only and shall have no effect upon the interpretation of these Conditions.



The above definitions apply whether the defined words appear in the singular or plural form.

2. Services covered by these terms

- 2.1.** The Broker will act as a shipbroker in relation to Fixtures. The role of the Broker is to introduce Principals. Thereafter, the broker will assist the Principals and/or their Representatives as a channel for Negotiations as well as providing such Post Fixture Services as may be agreed or provided by the Broker.
- 2.2.** Unless specifically agreed in writing, the Broker will act solely as an intermediary in relation to Fixtures and will not enter any Fixtures arising from the Services as a Principal. The Broker is not responsible for the performance or non-performance of Fixtures or Principals.
- 2.3.** Unless otherwise agreed, the Services are provided on a Fixture by Fixture basis.
- 2.4.** As part of the Services, the Broker may provide supplementary or ancillary services to the Client in relation to the shipping industry, including without limitation the provision of market research. Such services may be subject to specific provisions (such as disclaimers) in addition to these Conditions. In the event of, and only to the extent of, a conflict between these Conditions and the specific provisions the latter will prevail. Otherwise, these Conditions, including without limitation those as to limitation of liability, will apply.
- 2.5.** The Broker may, in its sole discretion, provide the Services to the Client by or in conjunction with any of its Affiliates or Associated Companies. In such circumstances, such Affiliates or Associated Companies shall comply with and have the full benefit and protection of these Conditions. The liability of the Broker and such Affiliates and Associated Companies shall be joint and several.
- 2.6.** The Broker shall use all reasonable endeavours to meet any performance dates, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 2.7.** Unless otherwise agreed in writing, the Broker shall supply the Services to the Client as agent.
- 2.8.** It is understood that where the Broker is dealing with a Representative or other intermediary rather than a Principal, the Broker is dealing with such Representative or intermediary in good faith as to the authority that they possess, but the Broker does not give a warranty as to that authority.
- 2.9.** These Conditions together with: (i) any separate scope of work agreed between the Parties; (ii) any other additional provisions or terms and conditions set out in writing by the Broker and agreed by the Client (including without limitation a commission agreement); and (iii) any amendments or supplements to any of the foregoing agreed from time to time in writing, will constitute the entire agreement relating to the Services (together, the "Contract"). In the event of any conflict or inconsistency between the documents comprising the Contract, the documents set out in clause 2.9(i) and (ii) shall take priority over these Conditions, in each case as supplemented and/or amended as envisaged in clause 2.9(iii).

3. Obligations of the Broker

- 3.1.** The Broker will perform the Services with the reasonable skill and care expected of a professional shipbroker.
- 3.2.** In dealing with others, the Broker will take care to stay within the authority given by You and to avoid misrepresentation.

- 3.3. During negotiations the Broker undertakes to pass on offers, counteroffers and other such communications in a timely manner. This obligation applies both to passing communications to and from You.
- 3.4. It is understood that the Broker may be dealing with Representatives or other intermediaries rather than directly with a Principal. In such cases, the Broker is dealing with such Representatives or other intermediaries in good faith as to the authority they possess but the Broker does not give any guarantee or warranty as to that authority.
- 3.5. If the Broker is acting directly for a Principal, then the Broker warrants that the Broker has the authority of that Principal.
- 3.6. If at any time the Broker provides information in respect of a Principal, including but not limited to information regarding corporate structures or financial standing, it is understood and agreed that in relation to the Broker such information is provided in good faith but without guarantee.
- 3.7. It is the sole obligation of the Principal to satisfy themselves of any counterparty risk and decide whether to enter a Fixture with the proposed counterparty and on what terms.
- 3.8. Unless otherwise agreed in writing, the Services are not provided on an exclusive basis and it is understood that the Broker may act as a shipbroker for other parties in relation to the same or other Fixtures. In the event the Broker is dealing directly with two Principals in relation to the same Fixture, the Broker's duties will be to pass on offers, counteroffers and other such communications in a timely manner as authorised by each Principal in turn.
- 3.9. If, in the Broker's absolute discretion, the performance of the Services may infringe any Applicable Laws, the Broker shall be entitled to suspend or cancel performance of the Services and in that event shall notify the Client.

4. Confidentiality

- 4.1. Where the Broker is given information, stated by You to be on a confidential basis or it is expressly agreed that a Fixture is confidential, (in either case "Confidential Information"), the broker will hold that Confidential Information in confidence and will not disclose it to any other party without prior permission from Client. This obligation will not however extend to information which:
 - 4.1.1. Was already or becomes known to the Broker through other sources not subject to such an obligation of confidentiality.
 - 4.1.2. Is or becomes known to the market generally other than as a result of a breach of this obligation.
 - 4.1.3. The Broker is obliged to disclose pursuant to an order of a court or other such authority.
 - 4.1.4. In all cases, such obligation of confidentiality shall be deemed to end 12 months after the end of performance of the Fixture in question or in the absence of a concluded Fixture 12 months from the end of the Negotiations.
 - 4.1.5. The Broker is able to pass over confidential information to the extent it is necessary and/or required for the provision of the Services.

5. Obligations to the Broker

- 5.1. If Client is a Principal, it warrants that it is either: (i) a Principal with full legal power to accept these Conditions and enter into Fixtures in connection with the Services; or (ii) the agent of a Principal authorised to accept these Conditions on behalf of the Principal and to make all offers, counteroffers and representations during Negotiations and to agree Fixtures on the Principal's behalf.

- 5.2. Where Services are provided, the Client is deemed to have engaged the Broker in relation to any Fixture that arises in connection with those Services whether or not it is concluded via the Broker.
- 5.3. The Client will provide the Broker with all information and instructions necessary for the performance of the Services. Where actions need to be taken by a certain time, (such as reply times during negotiations), Client will ensure the Broker has sufficient time to forward such messages prior to the expiry of any relevant time limit.
- 5.4. In relation to Post Fixture Services, if the Broker has asked you to use specific e-mail addresses for operational messages or claims then Client will use those e-mail addresses. In the event that the Client does not receive a prompt acknowledgement of receipt of time sensitive messages or claims documentation from the Broker, You undertake to contact the Broker to confirm receipt. The Broker will have no responsibility for a failure to action a message or claims documentation unless it is sent timely to the correct address and acknowledged by the Broker.
- 5.5. The Client will take care to avoid misrepresentations occurring in Negotiations. The Client will carefully review all messages sent or copied to Client and promptly advise the Broker of any errors or misrepresentations. The Broker is not responsible for the consequences of a failure by Client to review messages.
- 5.6. The Client warrants that it has specifically considered the limits and exclusions of liability set out in the "Limitation of Liability" clause 9 below and that it considers them to be fair and reasonable and a commercial allocation of risk having regard to the nature of the Services, the Fees paid for such Services and all other circumstances known to the Parties at the date of entering into the Contract.
- 5.7. You warrant that the Client does not know of any reason why the Fixture could be unlawful or which could render the provision of the Services by the Broker in breach of any relevant law, including but not limited to:
 - 5.7.1. Sanctions imposed by the United Nations, European Union, The United States of America or any national government having authority over Client, the Broker, a Representative or a Principal.
 - 5.7.2. Laws relating to bribery and corruption. The Client will promptly and fully inform the Broker of any such reason that comes to your attention. In the event that the Broker in their absolute discretion believes that the Fixture or the provision of the Services may infringe such laws, they may by written notice, terminate the Services immediately. In the event of such termination the broker will have no liability arising from such termination howsoever arising.
 - 5.7.3. Laws relating to money laundering which may preclude any notice on the part of the Broker
- 5.8. If the Client becomes aware of any claim or circumstances which might involve litigation or arbitration concerning or connected with the Services, the Client shall inform the Broker immediately.

6. Market Reports

- 6.1. If the broker publishes market reports or commentary, these are provided for general information only and not for use in relation to specific Fixtures. Such market reports do not constitute advice and nothing contained in such documents amounts to a recommendation to enter or not to enter a Fixture and the Broker has no liability for the consequences of any person, including the Client, purporting to rely on such market reports.

- 6.2.** Market reports and research publications are provided for general information only. They do not constitute advice or amount to a recommendation to enter or not to enter any specific transaction. While care has been taken to ensure that the information in these publications are accurate, the Broker accepts no responsibility for any errors or omissions or any consequences arising therefrom. Figures are based on the latest available information to the broker (which may not be the actual latest information available), which is subject to subsequent revision and correction. The views expressed are those of the Broker. Re-producing any material from this report without permission from the Broker is strictly prohibited.

7. Data Protection

- 7.1.** In providing, receiving, or requesting the Services, each Party may be required to provide the other Party with certain personal data and, in such event, each Party shall comply (and assist the other in complying) with the obligations imposed under the Data Protection Legislation in connection with such personal data. Each Party will be a data controller of the personal data supplied by the other Party, but in no event will the Parties be joint controllers. Each Party undertakes that (i) it is lawfully entitled to disclose any personal data; (ii) any data subject whose personal data it is providing under this Contract is aware of the use of such data; (iii) it will lawfully use personal data provided to it for the purposes of performing their obligations under the Contract, administering the relationship between the Parties and, in the case of the Broker, disclosing it to any of its Affiliates or Associated Companies for sales and marketing purposes; and (iv) it will have in place appropriate technical and organisational measures to protect the security, confidentiality and integrity of any personal data supplied.

8. The Broker's Remuneration

- 8.1.** On Fixtures, the Broker's remuneration will, (unless otherwise agreed), be in the form of a commission on the freight, hire or bareboat charter or purchase price as the case may be. The level of commission payable and the party responsible for payment will be set out in the Negotiations.
- 8.2.** If the commission payable to the Broker is recorded in a commission clause or in a specific commission agreement, then commission will be payable in accordance with that clause or agreement. The Broker will be deemed to have acted in reliance on the insertion of that clause and assented to the terms of the commission clause governing their right to commission.
- 8.3.** If the Client is the party agreed to be responsible for paying the commission, you undertake to make the payment or payments promptly. If the Client is not the party responsible for making the commission payment, the Client expressly agrees to the making of provision for such commission in the Fixture.
- 8.4.** Nothing in these terms will prevent the Broker from enforcing a commission clause or other clause conferring a benefit on them as a third party in accordance with the terms of the Fixture.
- 8.5.** In the absence of any specific provisions in the commission clause on voyage charters, commission is payable on deadfreight and demurrage as well as on freight. Freight shall include all items that comprise the freight rate. On time charters, commission will be payable on the hire paid under the charter and any continuation or extension of the charter. On sale agreements, commission is payable on delivery of the vessel and payment of the purchase price. On new

building contracts, commission is payable as and when each stage payment is made and as stated in separate agreements. Commission is payable on sums received by the Client as and when received and the Client will not withhold payment pending resolution of unconnected matters. Commission is exclusive of all taxes and duties.

- 8.6.** The tasks in clause 2.4 above will be subject to the agreement of a specific Fee between the Client and the Broker. The Broker will invoice the Client at the completion of the Services or at such other times and in such stages as may have been agreed. the Client will pay that fee within 15 days of the date of the invoice.
- 8.7.** If the Fee or amount of commission payable as a Fee has not been agreed, a reasonable commission shall be payable to the Broker based on the Parties' previous course of dealing (if any), or in the absence of any relevant course of dealing, in accordance with market practice.

9. Limitation of Liability

This clause limits the Broker's liability to the Client.

- 9.1.** Nothing in these Terms and Conditions limits the Broker's liability for:
 - 9.1.1.** Fraud or fraudulent misrepresentation.
 - 9.1.2.** Death or personal injury caused by the negligence of the Broker.
- 9.2.** The Broker will, subject to the provisions of this clause 9, be liable to Client for damage directly caused by the failure to perform the Services with the reasonable skill and care expected of a professional shipbroker, provided always the Broker will not be liable for:
 - 9.2.1.** Loss of profits (whether direct or indirect loss), business interruption (whether direct or indirect loss), loss of reputation (whether direct or indirect loss), and all indirect or consequential losses.
 - 9.2.2.** Damage caused by any event or cause that the Broker was unable to avoid and/or the consequences of which could not have been prevented by the exercise of reasonable diligence.
 - 9.2.3.** Damage which was not solely caused by the act or omission of the Broker or which would have occurred in any event.
- 9.3.** The Brokers' total liability arising from or in connection with the Services shall be fair and reasonable in relation to the Services provided, but in the event that there is no separate agreement, shall not exceed an amount of twelve months commission fees paid or US\$100,000 – whichever is the greater.
- 9.4.** The exclusions and/or limitations set out in this clause shall apply whether the claim against the Broker is brought in contract, tort (including for negligence) breach of statutory duty or for any other cause whatsoever.
- 9.5.** Any claim against the Broker must be made in writing and notified to them within 28 days of the date on which Client became aware or ought to have become aware of the circumstances giving rise to the claim and any claim not so notified shall be deemed waived and time barred. The Broker shall in any event be discharged of all liability arising out of the Services unless suit is brought and written notice of it given to them within one year of the end of performance of the Fixture or in the absence of a concluded Fixture, one year from the end of the Negotiations.
- 9.6.** The Broker will have no liability for breach of warranty of authority except where the breach was wilful or fraudulent.

10. Miscellaneous

- 10.1. All intellectual property rights in or arising out of the Services belong to the Broker.
- 10.2. The Broker has a general lien on all documents in its possession or control for all sums due from Client to the Broker whether arising out of the Fixture or otherwise.
- 10.3. If a court finds that any provision of these Terms and Conditions is invalid, illegal or unenforceable, that provision shall, to the minimum extent required, be deemed deleted and the validity, legality and enforceability of the remainder of that and all other provisions of these Terms and Conditions shall not be affected.

11. Force Majeure

- 11.1. Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for thirty days, the Party not affected may terminate the Contract by giving two weeks' written notice to the affected Party.

12. Notices

- 12.1. Any notice or other communication required to be given to a Party under or in connection with this Contract shall be in writing and shall be (a) delivered to the other Party personally, or sent by prepaid first-class post, recorded delivery, or by commercial courier, at its registered office or such other address as the receiving Party may notify from time to time for such purposes, or (b) by e-mail to such address as the receiving Party may notify from time to time for such purposes.
- 12.2. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by e-mail, at the time of transmission (unless a delivery failure notice is received by the sender). If deemed receipt under this clause would occur on a public holiday or outside 9:00 am to 5:00 pm Monday to Friday in the place of receipt, the notice shall be deemed to have been received when such usual business hours next recommence.
- 12.3. This clause 12 shall not apply to the service of any proceedings or other documents in any legal action.

13. Waiver

- 13.1. A waiver of any right under the Contract is only effective if it is expressly given in writing and shall not be deemed to be a waiver of any subsequent breach or default.
- 13.2. No failure or delay by a Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14. Third Parties



14.1. Unless it expressly states otherwise, these Conditions do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

15. Variation

15.1. Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when expressly agreed in writing by the Broker. Notwithstanding the foregoing, the Broker reserves the right to update these Conditions from time to time without the Client's consent and such updated terms shall be deemed accepted by the Client continuing to use the Services. It is the Client's sole responsibility to review these Conditions prior to using the Services.

16. Jurisdiction and Law

16.1. These terms shall be governed by and construed in accordance with the laws of England and Wales to the exclusion of any other law.

16.2. Any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration commenced. In cases where neither the claim, nor the counterclaim exceeds the sum of \$100,000 or such other sum as maybe agreed, then any dispute may be referred to arbitration in London in accordance with the Arbitration Act 1996 and LMAA Small Claims Procedures current at the time when the arbitration proceedings are commenced.