

**CONDITIONS OF SALE**

**ORDER OF COURT**

1. The sale by sealed tender of the cargo currently laden on board the MV "**NM Cherry Blossom**", being approximately 55,000 MT of rock phosphate, as more fully described below, takes place in terms of and subject to an Order of the High Court of South Africa, Eastern Cape Local Division, Port Elizabeth ("**the Court**"), Case No. 11/2018 (related to case no. 1487/2017) (hereinafter referred to as "**the Sale Order**").

**FURTHER DEFINITIONS**

2. The following words shall have the meanings herein ascribed to them:
  - 2.1 "**bidder**" refers to a person who is not a disqualified person who submits a bid in the sale process.
  - 2.2 "**the broker**" refers to Clear Asset (Pty) Limited, appointed by the Court in terms of paragraph 5 of the Sale Order.
  - 2.3 "**business day**" refers to a day other than a Saturday, Sunday or public holiday in the Republic of South Africa.
  - 2.4 "**the cargo**" refers to the 55,000MT of phosphate rock laden on board the vessel, consisting of a parcel of 45,000MT of Boucraa high grade 36% phosphate, loaded in holds # 1,2,4 and 5, and a parcel of 10,000MT of PB3 reactive phos/rock loaded in hold #3.

- 2.5 "**the commercial terms of the contract of affreightment**" refers to the freight rate(s) for the carriage of the cargo on board the vessel to the purchaser's nominated discharge port(s), the discharge port(s) lay time, based on discharge rates published by the port(s) and obtained via local port agents, and the demurrage rate(s).
- 2.6 "**the confirmation of sale**" refers to the confirmation by the broker in accordance with clause 21 of these sale conditions."
- 2.7 "**the contract of affreightment**" refers to the contract concluded or deemed to have been concluded between the purchaser and FWA in relation to the procurement of the carriage of the cargo on board the vessel to the purchaser's nominated discharge port or ports in accordance with clause 2.18 of these sale conditions.
- 2.8 "**day**" refers to a day including a Saturday, Sunday or public holiday in the Republic of South Africa.
- 2.9 "**FWA**" refers to Furness Withy (Australia) Pty Ltd, the time charterer of the vessel.
- 2.10 "**the highest bidder**" refers to the bidder who submits the highest valid bid during the sale period.
- 2.11 "**Howe Robinson**" refers to the brokers, Howe Robinson Partners (UK).
- 2.12 "**the next highest bidder**" refers to the bidder who submits the second highest valid bid during the sale period.
- 2.13 "**the owner**" refers to NM Shipping SA, the owner of the vessel.
- 2.14 "**the pro-forma GENCON voyage charterparty**" refers to the amended pro-forma GENCON voyage charterparty attached to these conditions of sale, marked "**COS1**".

- 2.15 "**the pro-forma CONGEN bill of lading**" refers to the amended pro-forma CONGEN bill of lading attached to these conditions of sale, marked "COS2".
- 2.16 "**the purchaser**" refers to the person who or which acquires the cargo pursuant to the sale process, either as confirmed by the broker as the purchaser of the cargo in terms of the confirmation of sale issued in terms of clause 21 of these conditions of sale, or as declared by the broker to be the purchaser in terms of clause 27 of these conditions of sale.
- 2.17 "**the purchase price**" refers to the purchase price for the cargo offered by the purchaser, including such interest as is payable thereon in terms of clauses 30 and 31 of these sale conditions.
- 2.18 "**the purchaser's nominated discharge port(s)**" refers to the discharge port or port's for the cargo nominated by the purchaser in conformity with these conditions of sale, which shall be within the geographical range of the ports prescribed by, and otherwise not be a port which is for whatever reason excluded by, the pro-forma Gencon voyage charterparty, unless otherwise agreed to by the broker in writing upon the direction of FWA.
- 2.19 "**a qualified person**" refers to a person who is not subject to sanctions imposed by the European Union, United Nations or United States of America.
- 2.20 "**the registrar**" refers to registrar of the Court.
- 2.21 "**the sale**" refers to the sale of the cargo pursuant to the sale process.
- 2.22 "**the sale application**" refers to the application commenced by FWA, the owner and master in the Court under case number 18/2018.

2.23 "the sale period" refers to the period described in paragraph 4 of the Sale Order.

2.24 "the sale process" refers to the process described in clause 6 and following of these conditions of sale.

2.25 "the sheriff" refers to the Sheriff of the High Court for the District of Port Elizabeth North.

2.26 "a valid bid" refers to a bid submitted by a bidder during the sale process in conformity with these conditions of sale, including payment by the bidder of the required deposit of 10% of his bid amount to the broker.

3. In these conditions, a reference to the masculine gender includes the feminine and neuter genders and vice versa as the case may be.

#### **ACKNOWLEDGEMENT AND WARRANTY BY THE BIDDER**

4. The bidder acknowledges and warrants that:

4.1 In order to bid in the sale process he must be a qualified person.

4.2 He has satisfied himself and is aware of the nature, extent and condition of the cargo, the terms of the Sale Order and these conditions of sale, including the annexures thereto, as well as the circumstances leading up to the sale.

#### **SALE FREE OF ENCUMBRANCES**

5. The cargo is sold in terms of South African law pursuant to the Sale Order, free of all liens, encumbrances, preferences and charges, and all arrests and attachments of the cargo affected before the passing of ownership of the

cargo to the purchaser shall be discharged on the passing of ownership of the cargo to the purchaser in terms of the sale process.

## **THE SALE AND THE SALE PROCESS**

6. The cargo is sold as is, where is on board the vessel (voetstoets), completely without warranty or guarantee or the like, whether express or implied, including, *inter alia*, in relation to its grade, specification, condition, quantity, quality, fitness or purpose or otherwise.
7. The registrar, the sheriff, the broker, any surveyor(s) or other sub-contractor(s) or agent(s) appointed by the broker, the parties to the sale application, their attorneys, advocates and/or other servants, agents, or sub-contractors:
  - 7.1 Shall not be responsible for any defect in the cargo, whether patent or latent.
  - 7.2 Do not warrant that any samples of the cargo drawn by a cargo surveyor appointed by the broker are representative of the rest of cargo in the hold of the vessel from which the sample is drawn.
  - 7.3 Do not warrant the accuracy or correctness of any report(s) generated in relation to cargo, including any report issued by any cargo surveyor or analytical laboratory.
  - 7.4 Shall not be liable for any delays in the sale process, howsoever arising.
8. The bidder shall be entitled to request the broker to procure samples of the cargo for that bidder, which shall be procured at the instance of the broker and made available to the relevant bidder, at his own cost, so as to enable him to conduct whatever inspection or analyses of the cargo he might require.

9. The cargo is sold subject to the condition that FWA shall procure and the owner shall perform the carriage of the cargo to the purchaser's nominated discharge port(s) pursuant to respective contracts to be concluded or which will be deemed to have been concluded between the purchaser and FWA, and the purchaser and the owner, in the manner and on the terms described below and attached to these sale conditions.
10. The sale of the cargo shall be by means of sealed tender, conducted by and under the exclusive control of the broker pursuant to the Sale Order.
11. In order to participate in the sale process the bidder must register on the broker's online bidding platform, at the following URL: [www.clearasset.co.za/user/register](http://www.clearasset.co.za/user/register), and provide the broker with the following documents and/or information required by it to enable the bidder's activation on the platform:
  - 11.1 Documents evidencing incorporation of the relevant corporate entity – certificates of incorporation, memorandum or articles of association, etc;
  - 11.2 Document evidencing proof of company's operating address (utility bill less than three months' old);
  - 11.3 Passport or identity document of person authorised to act on behalf of the company.
12. In the event of the bidder having any difficulty in registering on the broker's online bidding platform he shall be entitled to email the broker on email address [nolo@clearasset.co.za](mailto:nolo@clearasset.co.za) (work +27 21 418 2630) to request assistance from the broker, and the broker shall provide such assistance, where reasonable. After hour support [griella@clearasset.co.za](mailto:griella@clearasset.co.za) (Mobile: +27 79 899 9998)

13. The bidder shall be entitled to submit one bid during the sale period.
14. Bidding shall be in United States Dollars.
15. Any value added tax (VAT), customs or other duty or taxes payable in respect of the sale of the cargo shall be payable by the purchaser, and each bid shall be deemed to be exclusive of VAT, customs and/or any other duty or taxes.
16. Every bidder shall together with the submission of a bid provide the broker with a signed copy of these conditions of sale, and of the *pro-forma* GENCON voyage charterparty and *pro-forma* CONGEN bill of lading attached hereto marked "COS1" and "COS2" respectively.
17. Every bidder shall together with the submission of his bid, nominate a discharge port or range of discharge ports for the cargo in conformity with the terms of the *pro-forma* GENCON voyage charterparty.
18. The broker shall review the bids as soon as reasonably possible after they have been submitted and in the event of the bidder failing to sign copies of the aforesaid documents, or to nominate the aforesaid discharge port or range of discharge ports, or submitting a bid which is defective in any other way, the broker shall within 2 days of the bid being lodged call upon the bidder in writing to remedy any such defect(s) within 2 days. In the event of the bidder failing to cure the defective bid within the aforesaid 2 day period, and in any event if a defective bid has not been cured by the end of the sale period, the bid shall be an invalid bid.
19. Every bid made shall constitute an irrevocable offer to purchase the cargo at the amount of the bid, and to conclude the contract of affreightment and contract(s) of carriage, and shall be subject to the provisions of these conditions of sale and the Sale Order.

20. The sale process shall run for a period of 30 calendar days from the day the broker opens the sale process in accordance with paragraph 5.1.12 of the Sale Order, or such extended period as the broker may allow in terms of paragraph 4 of the Sale Order.
21. The broker shall upon on or before 17h00 (local time) on the next business day following the conclusion of the sale period issue a confirmation of sale to the highest bidder/the purchaser, which it shall place on its website and provide a copy thereof to the Registrar, the Applicants and the First and Second Respondents legal representatives, the sheriff (if not represented by an attorney) and to each bidder.

#### **THE DEPOSIT AND PAYMENT OF THE PURCHASE PRICE**

22. Each bidder shall pay 10% of his bid amount, in United States Dollars free of exchange and any bank or other charges of whatsoever nature, to the broker, as a deposit, by way of a direct telegraphic transfer into the account of the broker. Presentation of a SWIFT confirmation number shall be *prima facie* proof of remittance subject to the funds reflecting in the broker's account before the completion of the sale period.
23. The deposit shall be refunded to any unsuccessful bidder, save for the second highest bidder, by the broker, within 5 business days of the completion of the sale period.
24. Subject to the provisions of clause 25 hereunder, the balance of the purchase price shall be paid to the broker, in United States Dollars, free of exchange and any bank or other charges of whatsoever nature, by way of a direct telegraphic transfer into the account of the broker, by 16h30 South African time on the 5th business day following the broker providing the highest bidder/purchaser with the confirmation of sale.



25. Notwithstanding the provisions of clause 24 above, the broker may, in consultation with the applicants' attorneys, extend the period allowed for the payment of the balance of the purchase price, but not by more than 5 business days.
26. The deposit paid by the second highest bidder shall be refunded to him by the broker within 5 business days of payment of the balance of the purchase price by the highest bidder.

#### **BREACH AND DECLARATION OF NEXT HIGHEST BIDDER AS PURCHASER**

27. In the event of the highest bidder/the purchaser failing to pay the balance of the purchase price in terms of clauses 24 and 25:
  - 27.1 The deposit paid by the highest bidder/the purchaser shall forthwith and *ipso facto* be forfeited, and he shall have no claim whatsoever in respect thereof, which forfeiture shall be without prejudice to any other party's rights in terms of clauses 29 and 43 hereof.
  - 27.2 The broker may, in consultation with the applicants' attorneys, cancel the sale to the highest bidder/the purchaser, and:
    - 27.2.1 The applicants in the sale application or any other interested party may forthwith make application to the Court, on notice to the other interested parties, on the application papers in the sale application, supplemented as may be necessary, for such further order or directions as the Court may deem appropriate, whether for the re-sale of the cargo in terms of these conditions of sale, or otherwise; or
    - 27.2.2 declare the second highest bidder to be the purchaser of the cargo, which declaration shall be advertised and distributed by

the broker in the manner as provided for in the confirmation of sale.

28. In the event of the second highest bidder being declared to be the purchaser of the cargo, the deposit paid by the second highest bidder/purchaser shall be appropriated to the purchase price, and the second highest bidder/purchaser shall be obliged thereafter to affect payment of the balance of the purchase price by 16h00 South African time on the 5th business day following such declaration, as if he had been the highest bidder in terms of these conditions of sale, and the provisions of clause 25 shall apply *mutatis mutandis*.
29. The said procedure shall be without prejudice to the rights of the broker, the applicants in the sale application, or any other interested parties, to claim damages against the defaulting purchaser(s), either on their own behalf or on behalf of any other party entitled thereto.

#### **INTEREST ON THE UNPAID BALANCE OF PURCHASE PRICE**

30. The balance of the purchase price shall bear interest at the rate quoted by the Standard Bank of South Africa Limited from time to time as being the deposit rate for the currency concerned, calculated from the date on which payment thereof was due to the date of the payment of the balance of the purchase price.
31. The said interest shall be payable and shall form part of the purchase price for all purposes in terms of these conditions of sale.

#### **CARRIAGE OF THE CARGO TO THE PURCHASER'S NOMINATED DISCHARGE PORT(S)**

32. FWA and the purchaser shall endeavour to agree the commercial terms of the contract of affreightment within three days of the broker issuing the

confirmation of sale to the highest bidder/purchaser or declaring the second highest bidder to be the purchaser of the cargo.

33. In the event of FWA and the purchaser being unable to reach agreement on the commercial terms of the contract of affreightment:

33.1 Any such terms not yet agreed shall be stipulated by Howe Robinson.

33.2 FWA and the purchaser shall provide Howe Robinson with any representations which they might wish to make in relation to such terms, addressed to Mr Hindley on email addresses Guy.Hindley@howerob.com, within two days of the expiry of the aforesaid three day period.

33.3 Howe Robinson shall be entitled but not obliged to request further representations or information from FWA and/or the purchaser, and to require that such be provided within a specified time.

33.4 Howe Robinson shall stipulate the commercial terms of the contract of affreightment as soon as it is able to do so, but in any event within 5 business days of receipt by it of the last representation sent by FWA or the purchaser.

33.5 The commercial terms of the contract of affreightment as stipulated by Howe Robinson shall be binding on FWA and the purchaser.

33.6 Upon the agreement of the commercial terms of the contract of affreightment by FWA and the purchaser, or their stipulation by Howe Robinson, as the case may be, FWA and purchaser shall have concluded or be deemed to have concluded the contract of affreightment upon such commercial terms and the further terms set out in the *pro forma* GENCON voyage charterparty. In either event, the

purchaser and FWA shall proceed to each execute the contract of affreightment as soon as they are able to do so.

34. FWA shall thereafter, following the execution of the contract of affreightment, payment of the balance of the purchase price and any other charges owed to the broker by the purchaser, and payment of the freight due to FWA under the contract of affreightment, procure bills of lading to be issued by its agents on behalf of the master and owner to the purchaser, in respect of the carriage of the cargo from Port Elizabeth to the purchaser's nominated discharge port(s), on the terms of the *pro-forma* CONGEN bills of lading.
35. The date of the contract of affreightment shall be inserted onto the face of the *pro-forma* CONGEN bills of lading, and the terms thereof incorporated into the contract(s) of carriage concluded between the owner and the purchaser in respect of the carriage of the cargo to the purchaser's nominated discharge port(s), as evidenced by such bills.

#### **RISK AND DELIVERY**

36. The risk in and to the cargo shall pass to the highest bidder upon the broker issuing the confirmation of sale, and, if applicable, to the second highest bidder upon the broker declaring the second highest bidder to be the purchaser of the cargo.
37. In circumstances where the balance of the purchase price is not paid timeously, the broker shall immediately upon the passing of risk to the purchaser insure the cargo for the purchase price in the name of the purchaser, the registrar and the sheriff, for their respective rights and interest in the cargo, and shall forthwith deliver the policy of insurance to the registrar. The cost of such policy shall be paid by the purchaser in addition to the

purchase price. Such policy shall remain in force for as long as the balance of the purchase price or any other charges remain unpaid.

38. Delivery of the cargo shall be effected, and ownership transferred to the purchaser, by FWA issuing bills of lading on behalf of the owner in respect of the carriage of the cargo to the purchaser's nominated discharge port(s), following payment by the purchaser of the balance of the purchase price and any other outstanding costs to the broker, and payment of the freight to FWA.

#### **GENERAL**

39. In the event of the broker making any mistake in the conduct of the sale process, such mistake shall not be binding on the broker or the registrar, and the broker shall be entitled, in consultation with the FWA's attorneys, to re-sell the cargo on like terms.
40. No representation made by the broker not in accordance with these conditions of sale or the Sale Order shall be binding on the broker or the registrar.
41. Subject to clause 15 above, the purchaser shall duly declare the goods as provided for in the Customs and Excise Act, Act No. 91 of 1964 and in the event of the cargo being sold to a South African person, shall be responsible for obtaining any import permit or other authority required. It shall be the purchaser's duty to provide proof of compliance with these provisions to the registrar or the broker.
42. The bidders are deemed by having submitted a bid to have submitted to the jurisdiction of the Court (in the exercise of its Admiralty Jurisdiction) in respect of any claim, issue or dispute arising out of relating, whether directly or indirectly, to these conditions of sale and the sale process, including but not

limited to a claim for the recovery of any damages or the balance of the purchase price or other charges.

43. In the event of the sale(s) being cancelled due to a breach of these conditions of sale by the purchaser, any person or entity suffering loss or damage as a result of such cancellation(s) shall be entitled to claim such loss or damage from the defaulting purchaser.
44. Any sale which comes into effect in terms hereof shall be subject to South African law.

**SIGNATURE OF THE BIDDER**

The bidder, by appending his signature hereto, acknowledges and accepts the terms and conditions provided for herein, as read with the Sale Order.

DATED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ .

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**BIDDER**

"COSI"

1 Shipbroker  		RECOMMENDED THE BALTIC AND INTERNATIONAL MARITIME COUNCIL UNIFORM GENERAL CHARTER (AS REVISED 1922, 1976 and 1994) (To be used for trades for which no specially approved form is in force) CODE NAME : "G E N C O N" 	
		Part 1	
2 Place and date  			
3. Owners/Place of business (Cl.1) Furness Wilby (Australia) Pty, Ltd Level 12 484 St Kilda Road Melbourne, VIC 3004 Australia.		4. Charterers/Place of business (Cl.1)  	
5. Vessel's name (Cl.1) NM Cherry Blossom		6. OTRI (Cl.1) 34350/19990	
7. DWT all told on summer load line in metric tons (tbt) (Cl.1) 60960		8. Present position (Cl.1) At Anchor Algoa Bay	
9. Expected ready to load (tbt) (Cl.1) Not applicable			
10. Loading port or place (Cl.1) Cargo already on board at Algoa Bay		11. Discharging port place (Cl.1) One or more safe berth(s), one or more safe port(s)	
12. Cargo (also state quantity and margin in Owners' option, if agreed; if full and complete cargo not agreed state "part cargo") (Cl.1) About 55,000 metric tons bulk rock phosphate			
13. Freight rate (also state whether freight prepaid or payable on delivery) (Cl.4) Usd ..... Per metric ton		14. Freight payment (state currency and method of payment; also beneficiary and bank account) (Cl.4)  See Clause 20	
15. State if vessel's cargo handling gear shall not be used (Cl.5) Vessel gear to be used		16. Laytime (if separate laytime for load, and discharge is agreed, fill in a) and b); if total laytime for load, and discharge, fill in c) only) (Cl.5)	
17. Shipper's/Place of business (Cl.6)		a) Laytime for loading: not applicable	
18. Agents (Algoa Bay) (Cl.6) See Clause 50		b) Laytime for discharging:	
19. Agents (discharging) (Cl.6) See Clause 50		c) Total laytime for loading and discharging not applicable	
20. Demurrage rate and manner payable (loading and discharging) (Cl.7) USDXXX per day pro rata See Clause 40		21. Cancellation date (Cl.8) not applicable	
		22. General Average to be adjusted at (Cl.12) London	
23. Freight Tax (state if for the Owners' account (Cl.13(C)) Owner's account		24. Brokerage commission and to whom payable (Cl.15) Howe Robinson, 1 25%	
25. Law and Arbitration (state 19(a), 19(b) or 19(C) of Cl.19; if 19(c) agreed also state Place of Arbitration) (if not filled in 19(a) shall apply) (Cl.19) 19(a)			
(e) state maximum amount for small claims/arbitration (Cl.19) USD 50,000.00		26. Additional clauses covering special provisions, if agreed Clauses 20 - 52 as attached	
If it is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter Party which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict			
Signature (Owners)		Signature (Charterers)	

**PART II**  
**"Gencon" Charter (As Revised 1922, 1976 and 1994)**

It is agreed between the party mentioned in Box 3 as the Owners of the Vessel named in Box 5, of the GT/NT indicated in Box 6 and carrying about the number of metric tons of deadweight capacity all told on summer loadline stated in Box 7, now in position as stated in Box 8 and expected ready to load under this Charter Party about the date indicated in Box 9, and the party mentioned as the Charterers in Box 4 that:

The said Vessel shall, as soon as her prior commitments have been completed, proceed to the loading port(s) or place(s) stated in Box 10 or so near thereto as she may safely get and lie always afloat, and there load a full and complete cargo (if shipment of deck cargo agreed same to be at the Charterers' risk and responsibility) as stated in Box 12, which the Charterers bind themselves to ship, and being so loaded the Vessel shall proceed to the discharging port(s) or place(s) stated in Box 11 as ordered on signing Bills of Lading, or so near hereto as she may safely get and lie always afloat, and there deliver the cargo,

**1. Owners' Responsibility Clause**

The Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by personal want of due diligence on the part of the Owners or their Manager to make the Vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied, or by the personal act or default of the Owners or their Manager.

And the Owners are not responsible for loss, damage or delay arising from any other cause whatsoever, even from the neglect or default of the Master or crew or some other person employed by the Owners on board or ashore for whose acts they would, but for this Clause, be responsible, or from unseaworthiness of the Vessel on loading or commencement of the voyage or at any time whatsoever. (See also additional clause 52).

**2. Deviation Clause**

The Vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist Vessels in all situations, and also to deviate for the purpose of saving life and/or property.

**3. Payment of Freight**

a) The freight at the rate stated in Box 13 shall be paid in cash calculated on the unladen quantity of cargo.

b) *Prepaid*—If according to Box 13 freight is to be paid on shipment, it shall be deemed fully earned by Owners discountless and non-returnable *irrevocable whether Vessel and/or cargo lost or not lost*.

Neither the Owners nor their agents shall be required to sign or endorse bills of lading showing freight prepaid unless the freight due to the Owners has actually been received by Owners bank paid. (See additional clause 20)

c) *On delivery*—If according to Box 13 freight, or part thereof, is payable at destination it shall not be deemed earned until the cargo is thus delivered. Notwithstanding the provisions under (a), if freight or part thereof is payable on delivery of the cargo the Charterers shall have the option of paying the freight on delivered weight/quantity provided such option is declared before breaking bulk and the weight/quantity can be ascertained by official weighing machine, point draft survey or tally.

Cash for Vessel's ordinary disbursements at the port of loading to be advanced by the Charterers, if required, at highest current rate of exchange, subject to two (2) per cent to cover insurance and other expenses.

**4. Loading/Discharging**

a) *costs/Risks—Owners to forward musters stow plan.*

The cargo shall be brought into the holds, loaded, stowed and/or trimmed, allied, lashed and/or secured and taken from the holds and discharged by the Charterers, free of any risk, liability and expense whatsoever to the Owners.

The Charterers shall provide and lay all dunnage material as required for the proper stowage and protection of the cargo on board. The Owners allowing the use of all dunnage available on board. The Charterers shall be responsible for and pay the cost of removing their dunnage after discharge of the cargo under this Charter Party and time to count until dunnage has been removed.

**b) Cargo Handling Gear** See Clause 24

Unless the Vessel is gearless or unless it has been agreed between the parties that the Vessel's gear shall not be used and stated as such in Box 15, the Owners shall throughout the duration of loading/discharging give free use of the Vessel's cargo handling gear and of sufficient motive power to operate all such cargo handling gear. All such equipment to be in good working order.

Unless caused by negligence of the stevedores, time lost by breakdown of the Vessel's cargo handling gear or motive power - pro rata the total number of cranes/winches required at that time for the loading/discharging of cargo under this Charter Party - shall not count as laytime or time on demurrage.

On request the Owners shall provide free of charge cranesmen/winchemen from the crew to operate the Vessel's cargo handling gear, unless local regulations prohibit this, in which latter event shore labourers shall be for the account of the Charterers. Cranesmen/winchemen shall be under the Charterers' risk and responsibility and as stevedores to be deemed as their servants but shall

always work under the supervision of the Master.

**(c) Stevedore Damage**

The Charterers shall be responsible for damage (beyond ordinary wear and tear) to any part of the Vessel caused by Stevedores. Such damage shall be notified as soon as reasonably possible by the Master to the Charterers or their agents and to their Stevedores, failing which the Charterers shall not be held responsible. The Master shall endeavour to obtain the Stevedores' written acknowledgement of liability.

The Charterers are obliged to repair any stevedore damage prior to completion of the voyage, but must repair stevedore damage affecting the Vessel's seaworthiness or class before the Vessel sails from the port where such damage was caused or found. All additional expenses incurred shall be for the account of the Charterers and any time lost shall be for the account of and shall be paid to the Owners by the Charterers at the demurrage rate.

**6. Laytime**

**(a) Separate laytime for loading and discharging**

The cargo shall be loaded within the number of running days/hours as indicated in Box 16, weather permitting, Sundays and holidays included, unless used, in which case actual event time used shall count. See Clause 53/54

The cargo shall be discharged within the number of running days/hours as indicated in Box 16, weather permitting, Sundays and holidays included, unless used, in which case event time used shall count. See also Clause 54

**(b) Total laytime for loading and discharging**

The cargo shall be loaded and discharged within the number of total running days/hours as indicated in Box 16, weather permitting, Sundays and holidays included, unless used, in which case event time used shall count.

**(c) commencement of laytime (loading and discharging)**

Laytime for loading and discharging shall commence at 13.00 hours, if notice of readiness is given up to and including 12.00 hours, and at 06.00 hours next working day if notice given during office hours after 12.00 hours. Notice of readiness at loading port to be given to the shippers named in Box 17 or if not named, to the Charterers or their agents named in Box 18. Notice of readiness at the discharging port to be given to the Receivers or, if not known, to the Charterers or their agents named in Box 19. See Clause 21

If the loading/discharging berth is not available on the Vessel's arrival at or off the port of loading/discharging, the Vessel shall be entitled to give notice of readiness within ordinary office hours on arrival there, whether in free pratique or not, whether customs cleared or not. Laytime or time on demurrage shall then count as if she were in berth and in all respects ready for loading/discharging provided that the Master warrants that she is in fact ready in all respects. Time used in moving from the place of waiting to the loading/discharging berth shall not count as laytime.

If, after inspection, the Vessel is found not to be ready in all respects to load/dischARGE time lost after the discovery thereof until the Vessel is again ready to load/dischARGE shall not count as laytime.

Time used before commencement of laytime shall count.

\* Indicate alternative (a) or (b) as agreed, in Box 16.

**7. Demurrage**

Demurrage at the loading and discharging port is payable by the Charterers at the rate stated in Box 20 in the manner stated in Box 20 per day or pro rata for any part of a day. Demurrage shall fall due day by day and shall be payable upon receipt of the Owners' invoice. See Clause 40

In the event the demurrage is not paid in accordance with the above, the Owners shall the Charterers 96 running hours written notice to rectify failure. If the demurrage is not paid at the expiration of this time limit and if the vessel is in or at the loading port, the Owners are entitled at any time to terminate the Charter Party and claim damages for any losses caused thereby.

**8. Lien Clause**

The Owners shall have a lien on the cargo and on all sub-freights payable in respect of the cargo, for freight, deadfreight, demurrage, claims for damages and for all other amounts due under the Charter Party including costs of recovering same.

**9. Cancelling Clause**

(a) Should the Vessel not be ready to load (whether in berth or not) on the cancelling date indicated in Box 21, the Charterers shall have the option of cancelling this Charter Party.

(b) Should the Owners anticipate that, despite the exercise of due diligence, the Vessel will not be ready to load by the cancelling date, they shall notify the Charterers thereof without delay stating the expected date of the Vessel's readiness to load and asking whether the Charterers will exercise their option of cancelling the Charter Party, or agree to a new cancelling date.

Such option must be declared by the Charterers within 48 running hours after the receipt of the Owners' notice. If the Charterers do not exercise their option of cancelling, then this Charter Party shall be deemed to be amended such that



**PART II**  
**"Gencon" Charter (As Revised 1922, 1976 and 1994)**

~~he seventh day after the new readiness date stated in the Owners' notification~~ 149  
~~to the Charterers shall be the new cancelling date.~~ 150  
~~The provisions of sub-clause (b) of the Clause shall operate only once, and in~~ 151  
~~case of the Vessel's further delay, the Charterers shall have the option of~~ 152  
~~cancelling the Charter Party as per sub-clause (a) of this Clause.~~ 153

**0. Bills of Lading** 154  
 Bills of Lading shall be signed by the Owner's Agent as authorized by the 155  
 Master as per the Amended "Congenbill" Bill of Lading form, Edition 1994 156  
 attached to the Conditions of Sale as annexure "COS2"), without prejudice 157  
 to this Charter Party. 158

**1. Both-to-Blame Collision Clause** 160  
 If the Vessel comes into collision with another vessel as a result of the 161  
 negligence of the other vessel and any act, neglect or default of the Master, 162  
 Mariner, Pilot or the servants of the Owners in the navigation or in the 163  
 management of the Vessel, the owners of the cargo carried hereunder will  
 indemnify the Owners against all loss or liability to the other or non-carrying 164  
 vessel or her owners in so far as such loss or liability represents loss of, or 165  
 damage to, or any claim whatsoever of the owners of said cargo, paid or 166  
 payable by the other or non-carrying vessel or her owners to the owners of said 167  
 cargo and set-off, recouped or recovered by the other or non-carrying vessel 168  
 or her owners as part of their claim against the carrying Vessel or the Owners, 169  
 the foregoing provisions shall also apply where the owners, operators or those 170  
 in charge of any vessel or vessels or objects other than, or in addition to, the 171  
 colliding vessels or objects are at fault in respect of a collision or contact. 172  
 173

**2. General Average and New Jason Clause** 174  
 General Average shall be adjusted in London unless otherwise agreed in Box 175  
 2 according to York-Antwerp Rules 1994 and any subsequent modification 176  
 hereof. Proprietors of cargo to pay the cargo's share in the general expenses 177  
 even if same have been necessitated through neglect or default of the Owners' 178  
 servants (see Clause 2).  
~~General Average is to be adjusted in accordance with the law and practice of~~ 179  
~~the United States of America, the following Clause shall apply: "In the event of~~ 180  
~~accident, danger, damage or disaster before or after the commencement of the~~ 181  
~~voyage, resulting from any cause whatsoever whether due to negligence or~~ 182  
~~not, for which, or for the consequence of which, the Owners are not~~ 183  
~~responsible, by statute, contract or otherwise, the cargo shippers, consignees~~ 184  
~~or the owners of the cargo shall contribute with the Owners in General Average~~ 185  
~~to the payment of any sacrifices, losses or expenses of a General Average~~ 186  
~~nature that may be made or incurred and shall pay salvage and special charges~~ 187  
~~incurred in respect of the cargo. If a salving vessel is owned or operated by the~~ 188  
~~Owners, salvage shall be paid for as fully as if the said salving vessel or vessels~~ 189  
~~belonged to strangers. Such deposit as the Owners, or their agents, may deem~~ 190  
~~sufficient to cover the estimated contribution of the goods and any salvage and~~ 191  
~~special charges thereon shall, if required, be made by the cargo shippers,~~ 192  
~~consignees or owners of the goods to the Owners before delivery.~~ 193  
 194

**3. Taxes and Dues Clause** 195  
 a) *On Vessel* - The Owners shall pay all dues, charges and taxes customarily 196  
 levied on the Vessel, howsoever the amount thereof may be assessed, (save as set 197  
 out in the riders hereto) 198  
 b) *On cargo* - The Charterers shall pay all dues, charges, duties and taxes 199  
 customarily levied on the cargo, howsoever the amount thereof may be 200  
 assessed. 201  
 c) *On freight* - Unless otherwise agreed in Box 23, taxes levied on the freight 202  
 shall be for the Owners Charterers' account, (save as set out in the riders hereto) 203

**4. Agency** 204  
 In every case the Owners shall appoint the agents as per Clause 50 their own 205  
 Agent both at the port of loading and the port of discharge. 206

**5. Deleted** 207

**6. General Strike Clause** 208  
 a) If there is a strike or lock-out affecting or preventing the actual loading of the 209  
 cargo, or any part of it, when the Vessel is ready to proceed from her last port or 210

at any time during the voyage to the port or ports of loading or after her arrival 220  
 there, the Master or the Owners may ask the Charterers to declare, that they 221  
 agree to reckon the laydays as if there were no strike or lock-out. Unless the 222  
 Charterers have given such declaration in writing (by telegram, if necessary) 223  
 within 24 hours, the Owners shall have the option of cancelling this Charter 224  
 Party. If part cargo has already been loaded, the Owners must proceed with 225  
 same. (Freight payable on loaded quantity only) having liberty to complete with 226  
 other cargo on the way for their own account. 227

(b) If there is a strike or lock-out affecting or preventing the actual discharging 228  
 of the cargo on or after the Vessel's arrival at or off port of discharge and same 229  
 has not been settled within 48 hours, the Charterers shall have the option of 230  
 keeping the Vessel waiting until such strike or lock-out is at an end against 231  
 paying half demurrage after expiration of the time provided for discharging 232  
 until the strike or lock-out emanates and thereafter full demurrage shall be 233  
 payable until the completion of discharging, or of ordering the Vessel to a safe 234  
 port where she can safely discharge without risk of being detained by strike or 235  
 lock-out. Such orders to be given within 48 hours after the Master or the 236  
 Owners have given notice to the Charterers of the strike or lock-out affecting 237  
 the discharge. On delivery of the cargo at such port, all conditions of this 238  
 Charter Party and of the Bill of Lading shall apply and the Vessel shall receive 239  
 the same freight as if she had discharged at the original port of destination, 240  
 except that if the distance to the substituted port exceeds 1000 nautical miles, 241  
 the freight on the cargo delivered at the substituted port to be increased in 242  
 proportion. 243

(c) Except for the obligations described above, neither the Charterers or the 244  
 Owners shall be responsible for the consequences of any strikes or lock-outs 245  
 preventing or affecting the actual loading or discharging of the cargo. 246

**17. War Risks ("Voywar 1993")** 247  
 (1) For the purpose of this Clause, the words: 248  
 (a) The "Owners" shall include the shipowners, bareboat charterers, 249  
 disponent owners, managers or other operators who are charged with the 250  
 management of the Vessel, and the Master, and 251  
 (b) "War Risks" shall include any war (whether actual or threatened), act of 252  
 war, civil war, hostilities, revolution, rebellion, civil commotion, warlike 253  
 operations, the laying of mines (whether actual or reported), acts of piracy, 254  
 acts of terrorists, acts of hostility or malicious damage, blockades 255  
 (whether imposed against all Vessels or imposed selectively against 256  
 Vessels of certain flags or ownership, or against certain cargoes or crews 257  
 or otherwise howsoever), by any person, body, terrorist or political group, 258  
 or the Government of any state whatsoever, which, in the reasonable 259  
 judgment of the Master and/or the Owners, may be dangerous or are 260  
 likely to be or to become dangerous to the Vessel, her cargo, crew or 261  
 other persons on board the Vessel. 262

(2) If at any time before the Vessel commences loading, it appears that, in the 263  
 reasonable judgment of the Master and/or the Owners, performance of 264  
 the Contract of Carriage, or any part of it, may expose, or is likely to expose, 265  
 the Vessel, her cargo, crew or other persons on board the Vessel to War 266  
 Risks, the Owners may give notice to the Charterers canceling this 267  
 Contract of Carriage, or may refuse to perform such part of it as may 268  
 expose, or may be likely to expose, the Vessel, her cargo, crew or other 269  
 persons on board the Vessel to War Risks; provided always that if this 270  
 Contract of Carriage provides that loading or discharging is to take place 271  
 within a range of ports, and at the port or ports nominated by the Charterers 272  
 the Vessel, her cargo, crew, or other persons onboard the Vessel may be 273  
 exposed, or may be likely to be exposed, to War Risks, the Owners shall 274  
 first require the Charterers to nominate any other safe port which lies 275  
 within the range for loading or discharging, and may only cancel this 276  
 Contract of Carriage if the Charterers shall not have nominated such safe 277  
 port or ports within 48 hours of receipt of notice of such requirement, 278

(3) The Owners shall not be required to continue to load cargo for any voyage, 279  
 or to sign Bills of Lading for any port or place, or to proceed or continue on 280  
 any voyage, or on any part thereof, or to proceed through any canal or 281  
 waterway, or to proceed to or remain at any port or place whatsoever, 282  
 where it appears, either after the loading of the cargo commences, or at 283  
 any stage of the voyage thereafter before the discharge of the cargo is 284  
 completed, that, in the reasonable judgment of the Master and/or the 285  
 Owners, the Vessel, her cargo (or any part thereof), crew or other persons 286  
 on board the Vessel (or any one or more of them) may be, or are likely to be, 287  
 exposed to War Risks. If it should so appear, the Owners may by notice 288  
 request the Charterers to nominate a safe port for the discharge of the 289  
 cargo or any part thereof, and if within 48 hours of the receipt of such 290  
 notice, the Charterers shall not have nominated such a port, the Owners 291  
 may discharge the cargo at any safe port of their choice (including the port 292  
 of loading) in complete fulfillment of the Contract of Carriage. The Owners 293  
 shall be entitled to recover from the Charterers the extra expenses of such 294  
 discharge and, if the discharge takes place at any port other than the 295  
 loading port, to receive the full freight as though the cargo had been 296

## PART II

### "Gencon" Charter (As Revised 1922, 1976 and 1994)

carried to the discharging port and if the extra distance exceeds 100 miles,	297	of destination,	373
o additional freight which shall be the same percentage of the freight	298	(b) If during discharging the Master for fear of the Vessel being frozen in deens	374
contracted for as the percentage which the extra distance represents to	299	it advisable to leave, he has liberty to do so with what cargo he has on board and	375
he distance of the normal and customary route, the Owners having a lien	300	to proceed to the nearest accessible port where she can safely discharge,	376
n the cargo for such expenses and freight,	301	(c) On delivery of the cargo at such port, all conditions of the Bills of Lading	377
4) If at any stage of the voyage after the loading of the cargo commences, it	302	shall apply and the Vessel shall receive the same freight as if she had discharged	378
appears that, in the reasonable judgment of the Master and/or the	303	at the original port of destination, except that if the distance of the substituted	379
Owners, the Vessel, her cargo, crew or other persons on board the Vessel	304	port exceeds 100 nautical miles, the freight on the cargo delivered at the	380
may be, or are likely to be, exposed to War Risks on any part of the route	305	substituted port to be increased in proportion.	381
including any canal or waterway) which is normally and customarily used	306		
n a voyage of the nature contracted for, and there is another longer route	307	19. Law and Arbitration	382
o the discharging port, the Owners shall give notice to the Charterers that	308	* (a) This Charter Party shall be governed by and construed in accordance with	383
his route will be taken. In this event the Owners shall be entitled, if the total	309	English law and any dispute arising out of this Charter Party shall be referred to	384
extra distance exceeds 100 miles, to additional freight which shall be the	310	arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or	385
same percentage of the freight contracted for as the percentage which the	311	any statutory modification or re-enactment thereof for the time being in force,	386
extra distance represents to the distance of the normal and customary	312	Unless the parties agree upon a sole arbitrator, one arbitrator shall be	387
oute.	313	appointed by each party and the arbitrators so appointed shall appoint a third	388
5) The Vessel shall have liberty:-	314	arbitrator, the decision of the three-man tribunal thus constituted or any two of	389
a) to comply with all orders, directions, recommendations or advice as to	315	them, shall be final. On the receipt by one party of the nomination in writing of	390
departure, arrival, routes, sailing in convoy, ports of call, stoppages,	316	the other party's arbitrator, that party shall appoint their arbitrator within	391
destination, discharge of cargo, delivery or in any way whatsoever which	317	fourteen days, failing which the decision of the single arbitrator appointed shall	392
are given by the Government of the Nation under whose flag the Vessel	318	be final.	393
ails, or other Government to whose laws the Owners are subject, or any	319	For disputes where the total amount claimed by either party does not exceed	394
other Government which so requires, or any body or group acting with the	320	the amount stated in Box 25** the arbitration shall be conducted in accordance	395
power to compel compliance with their orders or directions;	321	with the Small Claims Procedure of the London Maritime Arbitrators	396
b) to comply with the orders, directions or recommendations of any war	322	Association. (See Clause 31)	397
risks underwriters who have the authority to give the same under the terms	323	* (b) This Charter Party shall be governed by and construed in accordance with	398
of the war risks insurance;	324	Title 9 of the United States Code and the Maritime Law of the United States and	399
c) to comply with the terms of any resolution of the Security Council of the	325	should any dispute arise out of this Charter Party, the matter in dispute shall be	400
United Nations, any directives of the European Community, the effective	326	referred to three persons at New York, one to be appointed by each of the	401
orders of any other Supranational body which has the right to issue and	327	parties hereto, and the third by the two so chosen; their decision or that of any	402
give the same, and with national laws aimed at enforcing the same to which	328	two of them shall be final, and for purpose of enforcing any award, this	403
the Owners are subject, and to obey the orders and directions of those who	329	agreement may be made a rule of the Court. The proceeding shall be	404
are charged with their enforcement;	330	conducted in accordance with the rules of the Society of Maritime Arbitrators.	405
d) to discharge at any other port any cargo or party thereof which may	331	be;	406
render the Vessel liable to confiscation as a contraband carrier;	332	For disputes where the total amount claimed by either party does not exceed	407
e) to call at any other port to change the crew or any part thereof or other	333	the amount stated in Box 25** the arbitration shall be conducted in accordance	408
persons on board the Vessel when there is reason to believe that they may	334	with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators.	409
be subject to internment, imprisonment or other sanctions;	335	be;	410
f) where cargo has not been loaded or has been discharged by the	336	* (c) Any dispute arising out of this Charter Party shall be referred to arbitration	411
Owners under any provisions of this Clause, to load other cargo for the	337	at the place indicated in Box 25, subject to the procedures applicable there. The	412
Owners' own benefit and carry it to any other port or ports whatsoever,	338	laws of the place indicated in Box 25 shall govern this Charter Party.	413
whether backwards or forwards or in a contrary to the ordinary or	339	(d) If Box 25 in Part I is not filled in, sub-clause (a) of this Clause shall apply.	414
customary route.	340	* (a), (b) and (c) are alternatives; indicate alternative agreed in Box 25.	415
6) If in compliance with any of the provisions of sub-clauses (2) to (5) of this	341	** Where no figure is supplied in Box 25 in Part I, this provision only shall be	416
Clause anything is done or not done, such shall not be deemed to be a	342	void but the other provisions of this Clause shall have full force and remain in	417
violation, but shall be considered as due fulfillment of the Contract of	343	effect.	
carriage,	344		
8. General Ice Clause	345		
Port of loading	346		
a) In the event of the loading port being inaccessible by reason of ice when the	347		
Vessel is ready to proceed from her last port or at any time during the voyage or	348		
on the Vessel's arrival or in case frost sets in after the Vessel's arrival, the	349		
Master for fear of being frozen in is at liberty to leave without cargo, and this	350		
Charter Party shall be null and void.	351		
b) If during loading the Master, for fear of the Vessel being frozen in, deem it	352		
advisable to leave, he has liberty to do so with what cargo he has on board and	353		
to proceed to any other port or ports with option of completing cargo for the	354		
Owners' benefit for any port or ports including port of discharge. Any part	355		
cargo thus loaded under this Charter Party to be forwarded to destination at the	356		
Vessel's expense but against payment of freight, provided that no extra	357		
expenses be thereby caused to the Charterers, freight being paid on quantity	358		
delivered (in proportion if lump sum), all other conditions as per this Charter	359		
Party.	360		
c) In case of more than one loading port, and if one or more of the ports are	361		
closed by ice, the Master or the Owners to be at liberty either to load the part	362		
cargo at the open port and fill up elsewhere for their own account as under	363		
section (b) or to declare the Charter Party null and void unless the Charterers	364		
agree to load full cargo at the open port.	364		
Port of discharge	366		
a) Should ice prevent the Vessel from reaching port of discharge the	367		
Charterers shall have the option of keeping the Vessel waiting until the re-	368		
opening of navigation and paying demurrage or of ordering the Vessel to a safe	369		
and immediately accessible port where she can safely discharge without risk of	370		
detention by ice. Such orders to be given within 48 hours after the Master or the	371		
Owners have given notice to the Charterers of the impossibility of reaching port	372		

**RIDER CLAUSES TO  
'NM CHERRY BLOSSOM' (FURNESS WITHY (AUSTRALIA)) /.....  
CHARTER PARTY DATED .....**

**CLAUSE 20**

**FREIGHT PAYMENT**

100% Freight is to be paid within three (3) banking days of freight being agreed or determined by Howe Robinson, as the case may be.

Freight shall be paid by Telegraphic Transfer to Owner's nominated bank account.

**Bank Details**

TO BE ADVISED BY FWA IN WRITING

**CLAUSE 21**

**NOTICE OF READINESS**

At discharge port notice of readiness (NOR) to be tendered 0800-1700 hours (local time) Monday to Sunday holidays excepted, whether in berth or not, whether in port or not, whether customs cleared or not, but vessel must be in free pratique. After tendering a valid NOR, twelve hours turn time at discharge port unless sooner commenced in which case actual time used to count.

**CLAUSE 22**

**NOTICES**

Owners or Master to give 24 hours definite Notice of Readiness to sail Algoa Bay by fax or e-mail during their office hours Monday through Friday 0800 – 1700 hours, Sundays and holidays excepted. Owners to keep Charterers frequently advised about vessel's position whilst on passage and to immediately advise of delay or deviation.

**CLAUSE 23**

**VESSEL'S EQUIPMENT**

Vessel to supply free of expense, light on deck and in holds, as on board day and night, also during excepted period, if required. Vessel to give use of her cranes, gantry cranes in good working order with motive power and gear to operate same simultaneously in load and discharge, if required. Shore winch men employed in loading and discharging for account and risk of Charterers/Shippers/Receivers.

**CLAUSE 24**

**CARGO HANDLING**

Performing vessel's cargo handling gear and/or equipment to be maintained in a thoroughly efficient state throughout the period of this Charter and gear must be able to lift up to it's safe working load at all times, otherwise all the time lost not to count as laytime/demurrage, pro-rata to number of crane(s)

inoperable and cost of shore gear and idle time of labour, and any costs directly related to breakdown of gear, to be for Owner's account. In the event that Owners engage shore gear to replace the inoperable ship's gear, then time is to count as laytime. Cost of shore gear and idle time of labour and other costs related directly to the time when neither ship's gear nor shore gear is working are to be for the Owner's account.

In the event of gear failure laytime shall cease on completion of loading and/or discharging at hatches where gear is working. Upon repair of gear at the affected hatches, and if the other unaffected hatches have already been completed, laytime shall resume pro rata to the number of cranes repaired for actual time used.

**CLAUSE 25**

**HATCH OPERATIONS**

First opening and last closing of hatches for Charterer's cargo at load and discharge ports to be done by crew at Owner's expense and time unless prohibited by local regulations. In the event the crew is not permitted to perform opening and closing of hatches, then the cost to be for the Charterer's account and the time so used to count as laytime.

All intermediate opening and closing of hatches if permitted also to be done by crew at Owner's expense but time to count.

**CLAUSE 26**

**OVERTIME**

Overtime to be for account of party ordering same, but Officer's and Crew's overtime always to be for Owner's account. Overtime ordered by Port authority to be for Charterer's account but Officers and Crews overtime always to be for Owner's account.

**CLAUSE 27**

**STEVEDORE DAMAGE**

Should any damages be caused to the vessel or her fittings due to act of default of the Stevedores at discharging port(s), Charterers to remain ultimately responsible for such damages provided the Master notifies Charterers or their Agents in writing, within 24 hours of the occurrence, but latest when the damage could have been discovered by the exercise of due diligence of Master. Master/Owner to endeavour direct settlement of any damages with respective Stevedores(s) and to furnish Charterers with copies of all such attempts.

**CLAUSE 28**

**NOTICES**

Owners to advise Charterers 10/7/5/4/3/2/1 day(s) ETA notice at discharge port when sailing from Algoa Bay for various telegraphic instructions regarding notices and vessel's position which have to be given on and after vessel's sailing, Charterers also to advise Owners of instruction given to Master.

**CLAUSE 29**

**PORT CHARGES**

Customary vessel's port charges (such as dockage, etc) include berthing and unberthing expenses are to be Owner's account and Owners to make their own financial arrangement to cover the requested advance for port expenses

by agents. Customs overtime and taxes/dues, if any, on cargo and freight to be for Charterer's account.

All Receptions/wharfage charges to be for Charterer's and Receiver's account.

**CLAUSE 30**

**ADDITIONAL CLAUSES**

The following clauses as attached hereto are deemed to be incorporated in and form part of this Charter Party which shall be the governing document in all matters relating to this contract, and incorporated in all Bills of Lading hereunder:

Clause Paramount, New P & I Bunkering Clause, New Jason Clause.

**CLAUSE 31**

**ARBITRATION**

London Arbitration and LMAA terms to apply.

**CLAUSE 32**

**STEVEDORES**

The Charterers are to appoint their own Stevedores in discharge port(s), at their own expenses and always at their risk.

**CLAUSE 33**

**CONFIDENTIALITY**

All negotiations and eventual fixture to be private and confidential save as required for legal/arbitral proceedings.

**CLAUSE 34**

**CREW**

The Owners of the vessel guarantee that the minimum terms and conditions of employment of the crew of the vessel are now or will be prior to presentation of the vessel for loading and will remain for the period of the Charter Party covered by an I.T.F Agreement or a bona fide Trade Union Agreement acceptable to the I.T.F.

**CLAUSE 35**

**VESSEL'S GEAR**

Vessel's cargo gear, hold ladders, cranes, and all other equipment shall comply with the countries in which the vessel will be employed, and Owners to ensure that the vessel is at all times in possession of valid and up to date certificates of safety and/or efficiency to comply with such regulations. If loading and/or discharging is not permitted due to failure of Master and/or Owners to comply with the aforementioned regulations or because vessel is not in possession of such aforementioned certificates, then such time lost will not count as laytime and all expenses incurred incidental to and resulting from such failure will be for the Owner's account.

Upon arrival load port(s) Charterers are permitted to place a surveyor on board the vessel to inspect vessels condition as well as status of safety/gear/equipment certificates.

**CLAUSE 36**

**LAW**

This Charter Party is governed by English Law.

**CLAUSE 37**

**SEAWORTHY TRIM**

Master is to give stevedores notice regarding his trim requirements as per custom of the trade.

**CLAUSE 38**

**CARGO INSURANCE**

Charterers must place all risks cargo insurance for the cargo at purchase price with an A rated Insurer and provide proof of such insurance before the Vessel sails Algoa Bay.

**CLAUSE 39**

**VESSEL'S DESCRIPTION**

'NM Cherry Blossom' Marshall Islands Flag, Built 2015

60,960 mt dwt on 13.05 m ssw

198m loa/32.26m beam

5 ho/5 ha 4 x 30 mt cranes 4 x 12.5 cbm grabs

No warranties as to speed or otherwise given – Vessel is accepted as is by Charterers

**CLAUSE 40**

**DEMURRAGE**

Owners are if possible to present to Charterers a copy of the Statement of Facts for each discharge port within three working days after the vessel sails from the port.

Demurrage, if any, to be settled and paid in cash in U.S. currency within 3 days of receipt of supporting documentation.

**CLAUSE 41**

**HOLD CLEANING**

After completion of discharge Owners to sweep clean the holds in their time and expense.

**CLAUSE 42**

**SHIPS DELAY**

Stevedores waiting charges due to ship's breakdown (including winch breakdowns and/or power failures), are to be for Owner's account limited to first shift, and time so used not to count but excluding ships delay owing to stormy weather.

**CLAUSE 43**

**OIL POLLUTION**

Notwithstanding any terms or conditions stated elsewhere in this Charter Party it is warranted that during the currency of this Charter, Owners will comply fully with any legislation enacted with respect to oil or other pollution such expression to include any rules and/or regulations issued thereunder by any Government, including Federal, State or Municipal or over division or authority thereof.

In particular Owners to establish and maintain at their expenses such financial security or responsibility in respect of oil or other pollution damage as may be required by any such legislation.

Owners hereby accept responsibility for all consequences and agree to indemnify Charterers against all claims, liabilities and costs (including

Charterers legal fees) which result from Owners failure to comply fully with such oil or other pollution legislation.

**CLAUSE 44**

**STATEMENT OF FACTS**

Master, Charterers, Shipper, Receiver or their agents to sign statement of facts at discharge ports.

**CLAUSE 45**

**LEGAL NOTICES**

All notices, requests, demands, and other communications between the Owners and Charterers shall be in writing in English and sent by email to the (email) addresses set out below. Any such notice shall be deemed to have been received at the time of transmission or on the following day if time of transmission has been sent outside of normal business hours at the place of receipt. Parties are required to notify the other if address details change.

Charterers details as provided for in the Conditions of Sale

Owners details are as follows:

Address: Furness Withy (Australia) Pty Ltd 484 St Kilda Road, Melbourne 3004, Australia

Email: ops@fwc-london.co.uk

**CLAUSE 46**

**HULL CLEANING AND INTERMEDIATE PORT WARRANTY AND INDEMNITY**

**Hull Cleaning**

As a result of the protracted idling of the vessel at anchor in Algoa Bay, the vessel has suffered bottom fouling and marine growth to an extent and effect presently unknown.

Should the Charterer nominate a port(s) of discharge which would not permit entry of the vessel due to bottom fouling and marine growth, the Charterer shall be responsible for arranging the necessary hull cleaning at an intermediate port. Hull cleaning is not permissible or possible in South Africa. The Charterer shall in this regard be responsible for making all arrangements for, and paying for, the cleaning of the vessels' hull at any intermediate port or ports by a suitably qualified contractor, such qualification to be to the reasonable satisfaction of the Owner.

In the event of the vessel having to call at an intermediate port for hull cleaning the Charterer shall, in addition to the freight as agreed or determined, pay to the Owner:

- (a) An amount to be calculated in accordance with the demurrage rate for any additional days (pro rata) taken to reach the discharge port i.e. beyond the vessel's normal expected sailing time, occasioned by the vessel having to deviate to the intermediate port from her route to the first or subsequent discharge ports, and

- (b) all costs and expenses associated with the deviation and the vessel's call at any intermediate port, including but not limited to bunkers consumed, port dues, pilotage and tug fees, and berth dues.

**Intermediate port warranty**

The Charterers warrant and undertake that any intermediate port will be physically and legally safe for the vessel and Owners, which shall be within IWL and normal trading limits and always within the allowed ports pursuant to clause 50 of the head charterparty appended hereto.

**Indemnity**

The Charterers agree to indemnify and hold the Owner harmless in respect of any and all claims, arrests or attachments, advanced against the Owner, the cargo or the vessel at the intermediate port by or at the instance of OCP SA, Phosphates De Boucraa SA and/or any of its associated or affiliated companies or entities, and in respect of any consequential loss or damage suffered by the Owner as a direct or indirect consequence thereof. Furthermore, in the event of the arrest, attachment or detention of the cargo or vessel by or at the instance of any such entity(ies) at the intermediate port, the Charterer shall immediately arrange for the provision of security and/or discharge of the cargo in order to permit the vessel to sail.

**CLAUSE 47**

**VESSEL'S SHIFTING**

Shifting from quarantine/place of waiting or pilot anchorage area to discharging berth to be for Owner's account and time not to count even if on demurrage. However time used for unusual shifting or re-shifting requested by Charterers after vessel has berthed to count as laytime and such shifting costs to be for Charterer's account.

**CLAUSE 48**

**WINCH SHELTER AND NOISE**

Any delays and costs due to excessive noise from vessels cargo gear to be for Owner's account.

**CLAUSE 49**

**INTERNATIONAL SAFETY MANAGEMENT**

From the date of coming into force of the International Safety Management (ISM) Code in relation to the Vessel and thereafter during the currency of this Charter Party, the Owners shall procure that both the Vessel and "the Company" (as defined by the ISM Code) shall comply with the requirements of the ISM Code. Upon request the Owners shall provide a copy of the relevant Document of Compliance (DOC) and Safety Management Certificate (SMC) to the Charterers.

Except as otherwise provided in this Charter Party, loss, damage, expense or delay caused by failure on the part of the Owners or "the Company" to comply with the ISM Code shall be for the Owners' account.

**CLAUSE 50**

**AGENTS**

The following agent will be utilized:



**At Algoa Bay:**

Rennies

**At Discharge port(s):**

Owners nominated agents

**CLAUSE 51**

**SLOW STEAMING**

Owners / Master have the right to reduce vessels speed / RPM (revolutions per minute) in order to optimize fuel efficiency and/or aim to reduce greenhouse gas emissions.

**CLAUSE 52**

**CONDITION OF CARGO**

In addition to and without in any way limiting the provisions of Clause 2, the Charterer hereby acknowledges that it acquired the cargo by judicial sale on an as-is-where-is basis, and that neither the Owner, nor their servants, agents or sub-contractors, including the Registered Owner/performing carrier, shall be liable for any claims of whatsoever nature, and howsoever arising, relating to the condition of the cargo at the time of the conclusion of this voyage charterparty ("the pre-existing condition"), whether such claims are advanced in contract, tort/delict, bailment or otherwise. For the avoidance of doubt, this exclusion of liability also relates to any damage to the cargo which manifests during the delivery voyage, but which is attributable to the pre-existing condition, or to any facts or circumstances which occurred prior to the conclusion of this voyage charterparty, including, without limitation, the detention of the vessel in Algoa Bay.

**END**

"COS2"

**BIMCO****CONGENBILL 2007**

BILL OF LADING

To be used with charter parties

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Shipper	Bill of Lading No	Reference No
Consignee	Vessel <b>M/V NM CHERRY BLOSSOM</b>	
Notify address <b>NOTIFY :</b>	Port of loading <b>LAAYOUNE, MOROCCO</b>	
	Place of acquisition of the cargo by the Charterer: <b>ALGOA BAY</b>	
	Port(s) of Discharge	
Shipper's description of goods  <b>NATURAL PHOSPHATE ROCK OF LIME IN BULK</b>		Gross weight  <b>METRIC TONS</b>
(of which on deck at shipper's risk; the Carrier not being responsible for loss or damage howsoever arising)		
Freight payable as per VOYAGE CHARTER PARTY dated 2018 concluded pursuant to an order of court dated under case number	The goods specified above to be carried from the place of acquisition to the Port(s) of Discharge or so near thereto as the Vessel may safely get. Weight, measure, quality, quantity, condition, contents and value unknown. (see clause 52 of the charterparty) IN WITNESS whereof the Master or Agent of the said vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void. <b>FOR CONDITIONS OF CARRIAGE SEE OVERLEAF.</b>	
FREIGHT ADVANCE Received on account of freight:	Place and date of issue <b>PORT ELIZABETH ON</b>	Number of original Bills of Lading
Carrier's name/principal place of business:	Signature box:  Master	

# CONGENBILL 2007

## BILL OF LADING

To be used with charter parties

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### Conditions of Carriage

- (1) All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause/Dispute Resolution Clause, are herewith incorporated.

(2) **General Paramount Clause**

The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924 ("the Hague Rules") as amended by the Protocol signed at Brussels on 23 February 1968 ("the Hague-Visby Rules") and as enacted in the country of shipment shall apply to this Contract. When the Hague-Visby Rules are not enacted in the country of shipment, the corresponding legislation of the country of destination shall apply, irrespective of whether such legislation may only regulate outbound shipments.

When there is no enactment of the Hague-Visby Rules in either the country of shipment or in the country of destination, the Hague-Visby Rules shall apply to this Contract save where the Hague Rules as enacted in the country of shipment or if no such enactment is in place, the Hague Rules as enacted in the country of destination apply compulsorily to this Contract.

The Protocol signed at Brussels on 21 December 1979 ("the SDR Protocol 1979") shall apply where the Hague-Visby Rules apply, whether mandatorily or by this Contract.

The Carrier shall in no case be responsible for loss of or damage to cargo arising prior to loading, after discharging, or while the cargo is in the charge of another carrier, or with respect to deck cargo and live animals.

(3) **General Average**

General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1994 in London unless another place is agreed in the Charter Party.

Cargo's contribution to General Average shall be paid to the Carrier even when such average is the result of a fault, neglect or error of the Master, Pilot or Crew.

(4) **New Jason Clause**

In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract or otherwise, the cargo, shippers, consignees or the owners of the cargo shall contribute with the Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Carrier, or his agents, may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the goods to the Carrier before delivery.

(5) **Both-to-Blame Collision Clause**

If the Vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master, Mariner, Pilot or the servants of the Carrier in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or non-carrying vessel or her owners to the owners of said cargo and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying Vessel or the Carrier.

The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

For particulars of cargo, freight, destination, etc., see overleaf