

Terms & Conditions

These terms and conditions apply to all dealings between You and IFCHOR (each a "Party" and together the "Parties") and will be effective whenever You request IFCHOR to provide Services or You respond to IFCHOR in relation to the provision of Services. These terms and conditions create a legally binding agreement between You and IFCHOR (You, IFCHOR and Services are defined below).

1. Definitions

In these terms and conditions, the following definitions apply:

"Cyber Security Incident": The loss or unauthorised destruction, alteration, disclosure of, access to, or control of a Digital Environment.

"Cyber Security": Technologies, processes, procedures and controls that are designed to protect Digital Environments from Cyber Security Incidents.

"Digital Environment": Information technology systems, operational technology systems, networks, internet-enabled applications or devices and the data contained within such systems.

"IFCHOR": Means the IFCHOR Group and includes all the affiliates of the Group.

"Fixture": 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": Exchanges, as authorized by the parties, whether verbal or in writing, in relation to the potential conclusion of a fixture.

"Post Fixture Services": Assistance with communications, operational matters and claims arising from the performance of a Fixture.

"Principal": A party to a Fixture including 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": 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 the Negotiations on behalf of a Principal.

"Services": The Services referred to in clause 2 of these terms and conditions.

"Ship": 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.

"You": The party requesting IFCHOR's services or responding to IFCHOR in relation to the provision of the Services. Where such party is acting as a Representative, references to You will additionally include the Principal.

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

2. Services covered by these terms

2.1 IFCHOR will act as a shipbroker in relation to Fixtures. The role of IFCHOR is to introduce Principals. Thereafter IFCHOR will assist the Principals and/or their Representatives as a channel for Negotiations as well as providing such Post Fixture Services and/or drafting of charterparties as may be agreed or provided by IFCHOR.

2.2 Unless specifically agreed in writing, IFCHOR will act solely as an intermediary in relation to Fixtures and will not enter as a legal party into any fixture arising from the services to a Principal. IFCHOR 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 IFCHOR may also agree to perform other tasks such as providing ship valuations and/or specific market research. Such tasks may be subject to specific provisions (such as the wording of a valuation certificate) in addition to these terms and conditions. In the event of, and only to the extent of, a conflict between these terms and conditions and the specific provisions, the latter will prevail. Otherwise these terms and conditions, including those as to limitation of liability, will apply.

3. Obligations of IFCHOR

3.1 IFCHOR will perform the Services with the reasonable skill and care expected of a professional shipbroker.

3.2 In dealing with others, IFCHOR will take care to stay within the authority given by You and to avoid misrepresentation.

3.3 During Negotiations, IFCHOR undertakes to pass on offers, counteroffers and other such communications accurately and in a timely manner. This obligation applies both to passing communications to and from You.

3.4 It is understood that IFCHOR may be dealing with Representatives or other intermediaries rather than directly with a Principal. In such cases, IFCHOR is dealing with such Representatives or other intermediaries in good faith as to the authority they possess but IFCHOR does not give a warranty as to that authority.

3.5 If IFCHOR is acting directly for a Principal, then IFCHOR warrants that it has the authority of that Principal.

3.6 If at any time IFCHOR 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 IFCHOR such information is provided in good faith but without guarantee. 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.

3.7 Unless otherwise agreed in writing, the Services are not provided on an exclusive basis and it is understood that IFCHOR may act as a shipbroker for other parties in relation to the same or other Fixtures. In the event IFCHOR is dealing directly with two Principals in relation to the same Fixture, IFCHOR's duties will be to pass on offers, counteroffers and other such communications accurately and in a timely manner as authorized, and as requested, by each Principal.

4. Confidentiality

Where IFCHOR 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"), IFCHOR will hold that Confidential Information in confidence and will not disclose it to any other party without prior permission from You, other than to its employees, officers, representatives, contractors, or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. This obligation will not however extend to information which (i) was already or becomes known to IFCHOR through other sources not subject to such an obligation of confidentiality (ii) is or becomes known to the market generally other than as a result of a breach of this obligation (iii) was lawfully in IFCHOR's possession prior to receipt from You, (iv) IFCHOR has rendered anonymous or (v) which IFCHOR is obliged to disclose pursuant to an order of a court or other such authority. In all cases such obligation of confidentiality shall be deemed to end 2 years after the end of performance of the Fixture in question or in the absence of a concluded Fixture 2 years from the end of the Negotiations.

5. Obligations to IFCHOR

5.1 If You are a Principal, you warrant that you have full legal power to enter into the Fixture brought about by the Services. If You are acting as a Representative You warrant that you have the Principal's authority (i) to accept these terms and conditions on their behalf and (ii) to make all offers, counteroffers and representations made during Negotiations and (iii) to agree a Fixture on their behalf.

5.2 Where Services are provided, You are deemed to have engaged IFCHOR in relation to any Fixture that arises in connection with those Services whether or not it is concluded via IFCHOR.

5.3 You will provide IFCHOR 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) you will ensure IFCHOR has sufficient time to forward such messages prior to the relevant time limit.

5.4 In relation to Post Fixture Services if IFCHOR has asked You to use specific e-mail addresses for operational messages or claims, then You will use those e-mail addresses. In the event that You do not receive a prompt acknowledgement of receipt of time sensitive messages, claims documentation, or cargo/vessels nominations from IFCHOR, You undertake to contact IFCHOR to confirm receipt. IFCHOR will have no responsibility for a failure to action a message, claims documentation or cargo/vessels nominations unless it is sent timely to the correct address and acknowledged by IFCHOR.

5.5 You will take care to avoid misrepresentations occurring in Negotiations. You will carefully review all messages sent or copied to You and promptly advise IFCHOR of any errors or misrepresentations. IFCHOR is not responsible for the consequences of a failure by You to review messages.

5.6 You warrant that the Fixture is not unlawful and the provision of the Services by IFCHOR does not expose IFCHOR to the risk of breaching any relevant law, including but not limited to (i) sanctions imposed by the United Nations, European Union, United Kingdom, The United States of America or any national government having authority over You, IFCHOR, a Representative or a Principal (together "Sanctions") and (ii) laws relating to money laundering, bribery and corruption. You will promptly and fully inform IFCHOR of any circumstances which may render the Fixture unlawful or which might expose IFCHOR to the risk of Sanctions. In the event that IFCHOR in its absolute discretion believes that the Fixture or the provision of the Services may infringe such laws, it may, by written notice, terminate the Services immediately, without prejudice to its rights under clause 7.9 below. In the event of such termination, IFCHOR will have no liability arising from such termination howsoever arising.

6. Market Reports

IFCHOR 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 into a Fixture and IFCHOR has no liability for the consequences of any person, including You, purporting to rely on such market reports.

7. IFCHOR's remuneration

7.1 On Fixtures, IFCHOR's remuneration will (unless otherwise agreed) be in the form of a commission on the freight, hire 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.

7.2 If the commission payable to IFCHOR is recorded in a commission clause or in a specific commission agreement then commission will be payable in accordance with that clause or agreement subject to clause 7.3 below. IFCHOR 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.

7.3 If You are the party agreed to be responsible for paying the commission, You undertake to make the payment or payments promptly, and within 30 days of the date on which the commission is incurred at the latest. If You are not the party responsible for making the commission payment, You expressly agree to the making of provision for such commission in the Fixture and guarantee the timely payment of such commission by the responsible party.

7.4 Nothing in these terms will prevent IFCHOR 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.

7.5 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 and any other accessorial gross amounts such as, but not limited to, ballast bonuses 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. Commission is payable on sums received by You as and when received and You will not withhold payment pending resolution of unconnected matters. Commission is exclusive of all taxes and duties.

7.6 For the avoidance of doubt, and unless otherwise agreed, Commission is not contingent on performance of the Fixture.

7.7 The tasks in clause 2.4 above will be subject to the agreement of a specific fee between You and IFCHOR. IFCHOR will invoice You at the completion of the Services or at such other times and in such stages as may have been agreed. You will pay that fee within 30 days of the date of the invoice.

7.8 If the amount of commission or fee and/or the manner of its payment is not specifically agreed a reasonable commission or fee will be payable by You in accordance with market practice.

7.9 Immediately upon termination of the Services, for any cause whatsoever, You shall pay IFCHOR all fees earned and recoverable costs incurred in respect of the Services performed up to the date of the termination of the Services, together with such reasonable costs and/or expenses incurred by IFCHOR

as a result of the termination of the Services. You will thereafter remain liable to pay to IFCHOR any fees which become due and payable after the date of termination of the Services in respect of any Fixtures which were concluded on or before the date of termination and/or which arise after the date of termination of the Services following performance of the Services prior to the date of termination of the Services.

8. Limitation of Liability

THIS CLAUSE LIMITS IFCHOR'S LIABILITY TO YOU.

8.1 Nothing in these terms and conditions limits IFCHOR's liability for (i) fraud or fraudulent misrepresentation, and/or (ii) death or personal injury caused by the negligence of IFCHOR.

8.2 IFCHOR will, subject to the provisions of this clause 8, be liable to You for damage directly caused by the failure to perform the Services with the reasonable skill and care expected of a professional shipbroker provided always IFCHOR will not be liable for:

(i) Loss of profits, business interruption, loss of reputation, indirect or consequential losses. (ii) Damage caused by any event or cause that IFCHOR was unable to avoid and/or the consequences of which could not have been prevented by the exercise of reasonable diligence. (iii) Damage which was not solely caused by the act or omission of IFCHOR or which would have occurred in any event.

8.3 IFCHOR's total liability arising from or in connection with the Services shall in no circumstances exceed the sum of USD 2,000,000 (United States Dollars 2 Million).

8.4 The exclusions and/or limitations set out in this clause shall apply whether the claim against IFCHOR is brought in contract, tort (including for negligence) breach of statutory duty or for any other cause whatsoever.

8.5 Any claim against IFCHOR must be made in writing and notified to IFCHOR within 14 days of the date on which You 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. IFCHOR 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 IFCHOR within one year of the end of performance of the Fixture or in the absence of a concluded Fixture 1 year from the end of the Negotiations.

9. Cyber Security

9.1 Each Party shall:

- (i) implement appropriate Cyber Security measures and systems and otherwise use reasonable endeavours to maintain its Cyber Security;
- (ii) have in place appropriate plans and procedures to allow it to respond efficiently and effectively to a Cyber Security Incident; and
- (iii) regularly review its Cyber Security arrangements to verify its application in practice and maintain and keep records evidencing the same.

9.2 Each Party shall use reasonable endeavours to ensure that any third-party providing services on its behalf in connection with this Contract complies with the terms of subclause 9.1(i)-(iii).

9.3 If a Party becomes aware of a Cyber Security Incident which affects or is likely to affect either Party's Cyber Security, it shall promptly notify the other Party.

(i) If the Cyber Security Incident is within the Digital Environment of one of the Parties, that Party shall:

(1) promptly take all steps reasonably necessary to mitigate and/or resolve the Cyber Security Incident; and

(2) as soon as reasonably practicable, but no later than 12 hours after the original notification, provide the other Party with details of how it may be contacted and any information it may have which may assist the other Party in mitigating and/or preventing any effects of the Cyber Security Incident.

(ii) Each Party shall share with the other Party any information that subsequently becomes available to it which may assist the other Party in mitigating and/or preventing any effects of the Cyber Security Incident.

9.4 Each Party's liability for a breach or series of breaches of this Clause shall never exceed a total of USD 100,000, unless same is proved to have resulted solely from the gross negligence or willful misconduct of such Party.

10. Miscellaneous

10.1 All intellectual property rights in or arising out of the Services belong to IFCHOR.

10.2 IFCHOR has a general lien on all documents in its possession or control for all sums due from You to IFCHOR 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. Document Retention and Destruction Policy

To view our document retention and destruction policy [click here](#).

12. Jurisdiction and Law

These terms and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with its subject matter shall be governed by and construed in accordance with the laws of England and Wales and any such dispute or claim shall be subject to the exclusive jurisdiction of the courts of England and Wales.