

1. Date and place of Agreement	
2. Tugowner/place of business (Cl. 1)	3. Hirer/place of business (Cl. 1)
4. Tow (name and type)	5. Gross tonnage/displacement tonnage
6. Maximum length/maximum breadth & towing draught (fore and aft)	7. Flag and place of registry
8. Registered owners	9. Classification society
10. P. & I. liability insurers	11. General condition of tow
12. Particulars of cargo and/or ballast and/or other property on board the tow	
13. Tug (name and type)	14. Flag and place of registry
15. Gross tonnage	16. Classification Society
17. P. & I. liability insurers	
18. Certificated bollard pull (if any)	19. Indicated BHP
20. Estimated daily average bunker oil consumption in good weather and smooth water (a) at full towing power with tow (b) at full sea speed without tow	
21. Winches and main towing gear	
22. Nature of service(s) (Cl. 2)	23. Contemplated route (state restricted waters if any (Cl. 1, 7 and 24))
24. Place of Departure (Cl. 13)	25. Place of Destination (Cl. 14)

26. Free time at place of departure (Cl. 6(a))	27. Free time at place of destination (Cl. 6(a))
28. Free Time for transiting canals and Restricted Waters (Cl. 6(a))	
29. Notices (Place of Departure) (Cl. 13(c)) (a) Initial departure period (from/to) (b) Initial departure notice (days notice/days period) (c) Final departure period and notice (days notice/days period) (d) Final departure time and date notice (days notice) (e) Notices to be given to	30. Delay payment (Cl. 6, 7, 8(c), 17(b), 24(a), 27(f), 28 and 32(b)) (a) Port rate (b) Sea rate
	31. Riding crew to be provided by (also state number to be provided) (Cl. 15)
	32. If riding crew provided by Tug owner state amount per man per day payable by Hirer (Cl. 15)
33. Lump sum towage price (also state when each instalment due and payable) (Cl. 3) (a) Lump sum towage price (b) amount due and payable on signing Agreement (c) amount due and payable on sailing of tug & tow from place of departure (d) amount due and payable on passing of tug and tow off (e) amount due and payable on arrival of tug & tow at place of destination	34. Payment of lump sum & other amounts (state currency, mode of payment, place of payment and bank account) (Cl. 3)
35. Interest rate (%) per annum to run from (state number of days) after any sum is due (Cl. 11)	36. Security (state sum, by whom to be provided and when) (optional, only to be filled in if expressly agreed) (Cl.12, 23)
37. Current cost of tug's bunker oil (also state type of bunkers) (Cl. 4)	38. Cancelling date (Cl. 5)
39. Termination fee (Cl. 22)	40. Dispute resolution (Cl. 33) (state whether alternative (a), (b) or (c) of Clause 33 agreed); if (c) agreed, also state place of arbitration (if box not filled in, Cl.33(a) shall apply) (Cl.33)
41. Numbers of additional clauses, covering special provisions, if agreed	

It is mutually agreed between the party mentioned in Box 2 (hereinafter called "the Tugowner") and the party mentioned in Box 3 (hereinafter called "the Hirer") that the Tugowner shall, subject to the terms and conditions of this Agreement which consists of PART I including additional clauses, if any agreed and stated in Box 41, and PART II and Annex A, use his best endeavours to perform the towage or other service(s) as set out herein. In the event of a conflict of terms and conditions, the provisions of PART I and any additional clauses, if agreed, shall prevail over those of PART II and Annex A to the extent of such conflict but no further.

Signature (Tugowner)	Signature (Hirer)
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Sample copy

PART II
TOWCON 2008 - INTERNATIONAL OCEAN TOWAGE AGREEMENT (LUMP SUM)

1. Definitions

“Tugowner” means the party stated in Box 2.

“Hirer” means the party stated in Box 3.

“Tug” means the vessel or vessels as described in Boxes 13 to 16.

“Tow” means one or more vessels or objects of whatsoever nature including anything carried thereon as described in Boxes 4 to 12.

“Voyage” means the voyage described in Boxes 24 and 25.

“Restricted Waters” for the purpose of this Contract means the waterways described in Box 23.

2. Basis of the Agreement

The Tugowner agrees to render the service(s) to the Tow as set out in Box 22.

3. Price and Conditions of Payment

- (a) The Hirer shall pay the Tugowner the sum set out in Box 33 (hereinafter called “the Lump Sum”).
- (b) The Lump Sum shall be payable as set out in Boxes 33 and 34.
- (c) The Lump Sum and all other sums payable to the Tugowner under this Agreement shall be payable without any discount, deduction, set-off, lien, claim or counter-claim, each instalment of the Lump Sum shall be fully and irrevocably earned at the moment it is due as set out in Box 33, Tug and/or Tow or part of Tow lost or not lost, and all other sums shall be fully and irrevocably earned on a daily basis as per Box 30.
- (d) All payments by the Hirer shall be made in the currency and to the bank account specified in Box 34.

4. Bunker Price Adjustment

- (a) This Agreement is concluded on the basis of the price per metric tonne of bunker oil stated in Box 37.
- (b) If the price actually paid by the Tugowner for bunker oil consumed during the Voyage should be higher, the difference shall be paid by the Hirer to the Tugowner.
- (c) If the price actually paid by the Tugowner for bunker oil consumed during the Voyage should be lower, the difference shall be paid by the Tugowner to the Hirer.
- (d) The log book of the Tug and copies of the bunker supplier’s invoices shall be conclusive evidence of the quantity of bunkers consumed and the prices actually paid.

5. Extension to Cancelling Date

Should the Tug not be ready to commence the towage at the latest at midnight on the date indicated in Box 38, the Hirer shall have the option of cancelling this Agreement and shall be entitled to claim damages for detention if due to the wilful default of the Tugowner.

- (a) Should the Tugowner anticipate that the Tug will not be ready, he shall notify the Hirer thereof without delay stating the expected date of the Tug’s readiness and ask whether the Hirer will exercise his option to cancel.
- (b) Such option to cancel must be exercised within forty-eight (48) hours after receipt of the Tugowner’s notice, otherwise the third day after the date stated in the Tugowner’s notice shall be deemed to be the new agreed date to commence the towage in accordance with this Agreement.

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6. Free Time/Delay Payments

- (a) The Free Time specified in Boxes 26 and 27 shall be allowed for the connecting and disconnecting of the Tow, transiting canals and Restricted Waters and all other purposes relating thereto. Free Time shall commence when the Tug arrives at the pilot station at the place of departure or the Tug and Tow arrives at the pilot station at the place of destination or anchors or arrives at the usual waiting area off such places or, in the case of canals and Restricted Waters, as from arrival at the pilot station or customary waiting place or anchorage, whichever is the earlier, and until dropping last outbound pilot when leaving for the open sea. Free Time for transiting canals and Restricted Waters shall be as stated in Box 28. Should the Free Time be exceeded, Delay Payments at the rate specified in Box 30 shall be payable until the Tug and Tow sail from the place of departure or the Tug is free to leave the place of destination.
- (b) Any Delay Payment due under this Agreement shall be paid to the Tugowner as and when earned on presentation of the invoice.

7. Canal and Restricted Waters Transit

- (a) If the contemplated route of the Tow, according to Box 23 will involve a transit of a canal or Restricted Waters, the Hirer is granted free time for any such transit, and such free time shall count against the number of hours stipulated in Box 28. If the Tow is delayed beyond the free time stipulated therein, unless the Tugowner is responsible for such delay, the Hirer shall pay for such extra transit time at the Delay Payments rate stipulated in Box 30 and shall, in addition, pay for all other documented extra expenses thereby incurred. Canal or Restricted Waters transit time is defined as from arrival at pilot station or customary waiting place or anchorage, whichever is the earlier, until dropping last outbound pilot when leaving for the open sea.
- (b) Should the transit of a canal or Restricted Waters be made impossible for reasons beyond the Tugowner's control, the Hirer shall pay for all extra time by which the voyage is thereby prolonged at the Delay Payments rate stated in Box 30.

8. Ice Clause for Tug and Tow

- (a) The Tug shall not be obliged to force ice, but subject to the Tugowner's prior approval having regard to its size, construction and class, it may follow ice-breakers.
- (b) The Tug shall not be required to enter or remain in any ice bound port or area, nor any port or area where lights, lightships, markers or buoys have been, or are about to be withdrawn by reason of ice, nor where on account of ice there is, in the Tugmaster's sole discretion, a risk that, in the ordinary course of events, the Tug will not be able to safely enter the place of departure to connect to the Tow, or depart from the place of departure with the Tow. In addition, if, on account of ice, the Tugmaster in his sole discretion considers it unsafe to proceed to, or to enter, the place of destination for fear of the Tug and/or Tow being frozen in and/ or damaged, he shall be at liberty to proceed to the nearest ice free port or safe place and there await the Hirer's instructions.
- (c) Any delay, deviation or additional expenses arising out of or in connection with the performance of this Agreement caused by or resulting from ice shall be for the Hirer's account and any delay payments shall be paid at the rate stated in Box 30.
- (d) Any additional insurance premiums and/or calls required by the Tug's insurers due to the Tug entering or remaining in any ice bound port or area shall be for the Hirer's account.

9. Additional Charges and Extra Costs

- (a) The Hirer shall appoint his agents at the place of departure and place of destination and ports of call or refuge and shall provide such agents with adequate funds as required.
- (b) The Hirer shall bear and pay as and when they fall due:

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(i) All port expenses, pilotage charges, harbour and canal dues and all other expenses of a similar nature, including those incurred under the provisions of Clause 24(b) (Necessary Deviation or Slow Steaming), levied upon or payable in respect of the Tug and the Tow.

(ii) All taxes, (other than those normally payable by the Tugowner in the country where he has his principal place of business and in the country where the Tug is registered) stamp duties or other levies payable in respect of or in connection with this Agreement or the payments of the Lump Sum or other sums payable under this Agreement or the services to be performed under or in pursuance of this Agreement, any Customs or Excise duties and any costs, dues or expenses payable in respect of any necessary permits or licenses.

(iii) The cost of the services of any assisting tugs when deemed necessary by the Tugmaster or prescribed by Port or other Authorities.

(iv) All costs and expenses necessary for the preparation of the Tow for towing (including such costs or expenses as those of raising the anchor of the Tow or tending or casting off any moorings of the Tow).

(v) The cost of insurance of the Tow

(c) All taxes, charges, costs, and expenses payable by the Hirer shall be paid by the Hirer direct to those entitled to them. If, however, any such tax, charge, cost or expense is in fact paid by or on behalf of the Tugowner (notwithstanding that the Tugowner shall under no circumstances be under any obligation to make such payments on behalf of the Hirer) the Hirer shall reimburse the Tugowner on the basis of the actual cost to the Tugowner upon presentation of invoice.

10. War Risk Escalation Clause

The Lump Sum is based and assessed on all war risk insurance costs applicable to the Tugowner in respect of the contemplated voyage in effect on the date of this Agreement. In the event of any subsequent increase or decrease in the actual costs, the Hirer or the Tugowner, as the case may be, shall reimburse to the other the amount of any increase or decrease in such war risk insurance costs.

11. Interest

If any amounts due under this Agreement are not paid when due, then interest shall accrue and shall be paid in accordance with the provisions of Box 35, on all such amounts until payment is received by the party to whom it is due.

12. Financial Security*

The Hirer undertakes to provide, if required by the Tugowner, security to the satisfaction of the Tugowner in the form and in the sum, at the place and at the time indicated in Box 36 as a guarantee for due performance of the Agreement. Such security shall be returned to the guarantor when the Hirer's financial obligations under this Agreement have been met in full.

*Optional, only applicable if Box 36 filled in.

13. Place of Departure

(a) The Tow shall be tendered to the Tugowner at the Place of Departure stated in Box 24.

(b) The place of connection and departure shall always be safe and accessible for the Tug to enter, to operate in and for the Tug and Tow to leave and shall be a place where such Tug is permitted to commence the towage in accordance with any local or other rules, requirements or regulations and shall always be subject to the approval of the Tugowner which shall not be unreasonably withheld.

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- (c) (i) The Tow shall be ready to sail from the Place of Departure between the dates indicated in Box 29 (a), hereinafter called the Initial Departure Period.
- (ii) The Hirer shall give the Tugowner such notice as is stipulated in Box 29 in respect of:
- (1) Initial Departure Notice (Box 29 (b)) which shall be the number of days' notice of the number of days period falling within the Initial Departure Period as to when the Tow will be ready to sail from the Place of Departure;
 - (2) Final Departure Period and Notice (Box 29 (c)) which shall be the number of days' notice of the number of days period falling within the Initial Departure Period as to when the Tow will be ready to sail from the Place of Departure; and
 - (3) Departure Time and Date Notice (Box 29 (d)) which shall be the number of days' notice of the time and date of sailing of the Tow which shall fall within the Final Departure Period.
- (iii) The Tow shall be offered to the Tugowner, duly certificated in accordance with Box 9, Sub-clause (b) above and Clauses 17 (Permits and Certification) and 18 (c) (Tow-worthiness of the Tow) and otherwise in accordance with the terms and conditions of this Agreement.
- (d) If the Hirer fails to comply strictly with the provisions of Sub-clause (c) above the date of departure shall be deemed to be either the last day of the Initial Departure Period or the last day of the Final Departure Period, whichever is earlier, and this date shall be binding for all consequences arising in respect of Delay Payments and any other payments due or charges incurred in the performance of this Agreement.

14. Place of Destination

- (a) The Tow shall be accepted and taken over by the Hirer immediately upon arrival at the Place of Destination stated in Box 25.
- (b) The place of disconnection shall always be safe and accessible for the Tug and Tow to enter, to operate in, and for the Tug to leave and shall be a place where such Tug is permitted to redeliver the Tow in accordance with any local or other rules, requirements or regulations and shall always be subject to the approval of the Tugowner, which shall not be unreasonably withheld.

15. Riding Crew

- (a) Riding crew for the Tow, if so requested by the Hirer, shall be provided by the party stated in Box 31. The number of riding crew shall be as stated in Box 31. All costs and expenses for such personnel will be for the account of the Hirer and such personnel shall be at all times under the orders of the Tugmaster. If the riding crew are provided by the Tugowner the Hirer shall pay to the Tugowner the amount per man per day stated in Box 32. If the riding crew are provided by the Hirer they shall not be deemed to be the servants or agents of the Tugowner. Permission for the Hirer to provide a riding crew on the Tow as well as the composition and suitability of the riding crew shall always be in the discretion of the Tugowner.
- (b) It shall be the Hirer's responsibility to provide the riding crew with suitable accommodation, food, fresh water, life saving appliances and all other requirements as necessary to comply with the laws and regulations of the Flag of the Tug and/or Tow and of the States through the territorial waters of which the Tug will pass or enter. It is a requirement that the members of the riding crew shall be able to speak and understand a language which is mutual to the Tug and Tow.
- (c) In the event that the Tugowner provides a riding crew for the Tow for its own purposes, all costs and expenses for such personnel shall be for the account of the Tugowner.

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16. Towing Gear and Use of Tow's Gear

- (a) The Tugowner agrees to provide free of cost to the Hirer the use of all tow wires, bridles and other towing gear carried on board the Tug for the purpose of the towage or other services to be provided under this Agreement. The Tow shall be connected up in a manner within the discretion of the Tugmaster.
- (b) The Tugowner may make reasonable use at his discretion of the Tow's gear, power, anchors, anchor cables, radio, communication and navigational equipment and all other appurtenances free of cost during and for the purposes of the towage or other services to be provided under this Agreement.
- (c) The Hirer shall pay for the replacement of any towing gear and accessories should such equipment become lost, damaged or unserviceable during the service(s), other than as a result of the Tugowner's negligence.

17. Permits and Certification

- (a) The Hirer shall arrange at his own cost and provide to the Tugowner all necessary licences, authorisations and permits required by the Tug and Tow to undertake and complete the contractual voyage together with all necessary certification for the Tow to enter or leave all or any ports of call or refuge on the contemplated voyage.
- (b) Any loss or expense incurred by the Tugowner by reason of the Hirer's failure to comply with this Clause shall be reimbursed by the Hirer to the Tugowner and during any delay caused thereby the Tugowner shall receive additional compensation from the Hirer at the Tug's Delay Payment rate specified in Box 30.

18. Tow-worthiness of the Tow

- (a) The Hirer shall exercise due diligence to ensure that the Tow shall, at the commencement of the towage, be in all respects fit to be towed from the place of departure to the place of destination.
- (b) The Hirer undertakes that the Tow will be suitably trimmed and prepared and ready to be towed at the time when the Tug arrives at the place of departure and fitted and equipped with such shapes, signals, navigational and other lights of a type required for the towage.
- (c) The Hirer shall supply to the Tugowner or the Tugmaster, on the arrival of the Tug at the place of departure a certificate of tow-worthiness for the Tow issued by a recognised firm of Marine Surveyors or Survey Organisation, provided always that the Tugowner shall not be under any obligation to perform the towage until in his discretion he is satisfied that the Tow is in all respects trimmed, prepared, fit and ready for towage but the Tugowner shall not unreasonably withhold his approval.
- (d) No inspection of the Tow by the Tugowner shall constitute approval of the Tow's condition or be deemed a waiver of the foregoing undertakings given by the Hirer.

19. Seaworthiness of the Tug

The Tugowner will exercise due diligence to tender the Tug at the place of departure in a seaworthy condition and in all respects ready to perform the towage, but the Tugowner gives no other warranties, express or implied.

20. Substitution of Tugs

The Tugowner shall at all times have the right to substitute any tug or tugs for any other tug or tugs of adequate power (including two or more tugs for one, or one tug for two or more) at any time whether before or after the commencement of the towage or other services and shall be at liberty to employ a tug or tugs belonging to other tugowners for the whole or part of the towage or other service contemplated under this Agreement. Provided however, that the main particulars of the substituted tug or tugs shall be subject to the Hirer's prior approval, but such approval shall not be unreasonably withheld.

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21. Salvage

- (a) Should the Tow break away from the Tug during the course of the towage service, the Tug shall render all reasonable services to re-connect the towline and fulfil this Agreement without making any claim for salvage.
- (b) If at any time the Tugowner or the Tugmaster considers it necessary or advisable to engage salvage services from any vessel or person on behalf of the Tug or Tow, or both, the Hirer hereby undertakes and warrants that the Tugowner or his duly authorised servant or agent including the Tugmaster have full actual authority of the Hirer to accept such services on behalf of the Tow on any reasonable terms. Where circumstances permit the Tugowner shall consult with the Hirer on the need for salvage services for the Tow.

22. Termination by the Hirer

- (a) At any time prior to the departure of the Tow from the place of departure the Hirer may terminate this Agreement upon payment of the termination fee set out in Box 39. If termination takes place whilst the Tug is en route to the place of departure or after the Tug has arrived at or off the place of departure then in addition to the said termination fee the Hirer shall pay any additional amounts due under this Agreement.
- (b) In the event that the towage operation is terminated after departure from the place of departure, but before the Tow arrives at the place of destination without fault on the part of the Tugowner, his servants or agents, the Tugowner shall be entitled to be paid, and if already paid to retain, all sums payable according to Box 33, accrued Delay Payments and any other amounts due under this Agreement. The above amounts are in addition to any damages the Tugowner may be entitled to claim for breach of this Agreement.

23. Termination by the Tugowner

- (a) The Tugowner may, without prejudice to any other remedies he may have, withdraw from and terminate this Agreement and leave the Tow in a place where the Hirer may take repossession of it and be entitled to payment of the Lump Sum less expenses saved by the Tugowner and all other payments due under this Agreement, upon any one or more of the following grounds:
 - (i) If there is any delay or delays (other than delay caused by the Tug) at the place of departure exceeding in aggregate fourteen (14) days.
 - (ii) If there is any delay or delays (other than a delay caused by the Tug) at any port or place of call or refuge exceeding in aggregate fourteen (14) days.
 - (iii) If the financial security as may be required according to Box 36 is not given within seven (7) running days of the Tugowner's request to provide security.
 - (iv) If the Hirer has not accepted the Tow within seven (7) running days of arrival at the place of destination.
 - (v) If any amount payable under this Agreement has not been paid within seven (7) running days of the date such sums are due.
- (b) Before exercising his option of withdrawing from this Agreement as aforesaid, the Tugowner shall give the Hirer 48 hours' notice of his intention so to withdraw.

24. Necessary Deviation or Slow Steaming

- (a) If the Tug during the course of the towage or other service under this Agreement puts into a port or place or seeks shelter or is detained or deviates from the original route as set out in Box 23, or slow steams because either the Tugowner or Tugmaster reasonably consider
 - (i) that the Tow is not fit to be towed; or

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(ii) the towing connection requires rearrangement; or

(iii) repairs or alterations to or additional equipment for the Tow are required to safeguard the venture and enable the Tow to be towed to destination; or

(iv) it would not be prudent to do otherwise on account of weather conditions actual or forecast; or because of any other good and valid reason outside the control of the Tugowner or Tugmaster, or because of any delay caused by or at the request of the Hirer, this Agreement shall remain in full force and effect, and the Tugowner shall be entitled to receive from the Hirer additional compensation at the appropriate Delay Payment rate as set out in Box 30 for all time spent in such port or place and for all time spent by the Tug at sea in excess of the time which would have been spent had such slow steaming or deviation not taken place.

(b) The Tug shall at all times be at liberty to go to the assistance of any vessel in distress for the purpose of saving life or property or to call at any port or place for bunkers, repairs, supplies, or any other necessaries or to land disabled seamen, but if towing the Tug shall leave the Tow in a safe place and during such period this Agreement shall remain in full force and effect, including the provisions of Clause 9(b)(i).

(c) Any deviation howsoever or whatsoever by the Tug or by the Tugowner not expressly permitted by the terms and conditions of this Agreement shall not amount to a repudiation of this Agreement and the Agreement shall remain in full force and effect notwithstanding such deviation.

25. Liability and Indemnity

(a) (i) The Tugowner will indemnify the Hirer in respect of any liability adjudged due or claim reasonably compromised arising out of injury or death of any of the following persons, occurring during the towage or other service hereunder, from arrival of the Tug at the pilot station or customary waiting place or anchorage at the Place of Departure (whichever is sooner), until disconnection at the Place of Destination, however such geographic and/or time limits shall not apply to sub-clause 25(a)(i)(2) below:

- (1) The Master and members of the crew of the Tug and any other servant or agent of the Tugowner;
- (2) The members of the riding crew provided by the Tugowner or any other person whom the Tugowner provides on board the Tow;
- (3) Any other person on board the Tug who is not a servant or agent of the Hirer or otherwise on board on behalf of or at the request of the Hirer.

(ii) The Hirer will indemnify the Tugowner in respect of any liability adjudged due or claim reasonably compromised arising out of injury or death occurring during the towage or other service hereunder of any of the following persons:

- (1) The Master and members of the crew of the Tow and any other servant or agent of the Hirer;
- (2) Any other person on board the Tow for whatever purpose except members of the riding crew or any other persons whom the Tugowner provides on board the Tow pursuant to its obligations under this Agreement.

(b) (i) The following shall be for the sole account of the Tugowner without any recourse to the Hirer, his servants, or agents, whether or not the same is due to any breach of contract, negligence or any other fault on the part of the Hirer, his servants or agents:

- (1) Save for the provisions of Clause 16 (c), loss or damage of whatsoever nature, howsoever caused to or sustained by the Tug or any property on board the Tug.
- (2) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tug or obstruction created by the presence of the Tug.

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- (3) Loss or damage of whatsoever nature suffered by the Tugowner or by third parties in consequence of the loss or damage referred to in (1) and (2) above.
- (4) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tug or in respect of preventing or abating pollution originating from the Tug.

The Tugowner will indemnify the Hirer in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage. The Tugowner shall not in any circumstances be liable for any loss or damage suffered by the Hirer or caused to or sustained by the Tow in consequence of loss or damage howsoever caused to or sustained by the Tug or any property on board the Tug.

(ii) The following shall be for the sole account of the Hirer without any recourse to the Tugowner, his servants or agents, whether or not the same is due to any breach of contract (including as to the seaworthiness of the Tug), negligence or any other fault on the part of the Tugowner, his servants or agents:

- (1) Loss or damage of whatsoever nature, howsoever caused to or sustained by the Tow.
- (2) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tow or obstruction created by the presence of the Tow.
- (3) Loss or damage of whatsoever nature suffered by the Hirer or by third parties in consequence of the loss or damage referred to in (1) and (2) above.
- (4) Any liability in respect of wreck removal or in respect of the expense of moving or lighting or buoying the Tow or in respect of preventing or abating pollution originating from the Tow. The Hirer will indemnify the Tugowner in respect of any liability adjudged due to a third party or any claim by a third party reasonably compromised arising out of any such loss or damage but the Hirer shall not in any circumstances be liable for any loss or damage suffered by the Tugowner or caused to or sustained by the Tug in consequence of loss or damage, howsoever caused to or sustained by the Tow.

c) Save for the provisions of Clauses 17, (Permits & Certification); 18, (Tow-worthiness of the Tow); 19, (Seaworthiness of the Tug); 22 (Termination by the Hirer) and 23 (Termination by the Tugowner), neither the Tugowner nor the Hirer shall be liable to the other party for

(i) any loss of profit, loss of use or loss of production whatsoever and whether arising directly or indirectly from the performance or non performance of this Agreement, and whether or not the same is due to negligence or any other fault on the part of either party, their servants or agents, or

(ii) any consequential loss or damage for any reason whatsoever, whether or not the same is due to any breach of contract, negligence or any other fault on the part of either party, their servants or agents.

(d) Notwithstanding any provisions of this Agreement to the contrary, the Tugowner shall have the benefit of all limitations of, and exemptions from, liability accorded to the owners or chartered owners of vessels by any applicable statute or rule of law for the time being in force and the same benefits are to apply regardless of the form of signatures given to this Agreement.

26. Himalaya Clause

All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Agreement or by any applicable statute rule or regulation for the benefit of the Tugowner or Hirer shall also apply to and be for the benefit of:

- (a) demise charterers, sub-contractors, operators, Master, officers and crew of the Tug or Tow and,

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- (b) all bodies corporate, parent of, subsidiary to, affiliated with or under the same management as either the Tugowner or Hirer, as well as all directors, officers, servants and agents of the same and
- (c) all parties performing services within the scope of this Agreement for or on behalf of the Tug or Tugowner or Hirer as servants, agents and sub-contractors of such parties.

The Tugowner or Hirer shall be deemed to be acting as agent or trustee of and for the benefit of all such persons, entities and vessels set forth above but only for the limited purpose of contracting for the extension of such benefits to such persons, bodies and vessels.

27. War and Other Risks

- (a) For the purpose of this Clause, the words:

(i) "War Risks" shall include any actual, threatened or reported:

war; act of war; civil war; hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; acts of piracy; acts of terrorists; acts of hostility or malicious damage; blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever); by any person, body, terrorist or political group, or the Government of any State whatsoever, which, in the reasonable judgement of the Master and/or the Tugowners, may be dangerous or are likely to be or to become dangerous to the Tug, her Tow, crew or other persons on board the Tug or Tow.

(ii) "Other Risks" shall include any actual, threatened or reported:

arrest or restraint of princes, rulers or people; insurrections; riots or civil commotions; disturbances; acts of God; epidemics; quarantine; labour troubles; labour obstructions; strikes; lock-outs; embargoes; seizure of the Tow under legal process or any other cause outside the control of the Tugowner as a result of which it would be impossible or unsafe or commercially impracticable for the Tug or Tow or both to enter or attempt to enter or leave or attempt to leave the place of departure or any port or place of call or refuge or to reach or attempt to reach or enter the port or place of destination of the Tow and there deliver the Tow and leave again, all of which safely and without unreasonable delay, the Tug may leave the Tow or any part thereof at the place of departure or any other port or place where the Hirer may take repossession and this shall be deemed a due fulfillment by the Tugowner of this Agreement and any outstanding sums and all extra costs of delivery at such place and any storage costs incurred by the Tugowner shall thereupon become due and payable by the Hirer.

- (b) The Tug, unless prior written consent of the Tugowners has first been obtained, shall not be required to continue to or through, any port, place, area or zone (whether of land or sea), or any waterway or canal, where it appears that the Tug, her Tow, the crew or other persons on board the Tug or Tow, in the reasonable judgement of the Master and/or the Tugowners, may be, or are likely to be, exposed to War or Other Risks. Should the Tug be within any such place as aforesaid, which only becomes subject to War or Other Risks, or is likely to be or to become subject to War or Other Risks, after her entry into it, she shall be at liberty to leave such place or area.
- (c) (i) The Tugowners may effect war risks insurance in respect of the Hull and Machinery of the Tug and their other interests (including, but not limited to, loss of earnings and detention, the crew and their Protection and Indemnity Risks), and the premiums and/or calls therefor shall be for their account.

(ii) If the Underwriters of such insurance should require payment of additional premiums and/or calls because, pursuant to the Hirers' orders, the Tug is within, or is due to enter and remain within, or pass through any area or areas which are specified by such Underwriters as being subject to additional premiums because of War Risks, then the actual additional premiums and/or calls paid shall be reimbursed by the Hirers to the Tugowners at the same time as the next payment of the hire is due, or upon delivery of the Tow, whichever occurs first.
- (d) If the Tugowners become liable under the terms of employment to pay to the crew of the Tug, or any riding crew of the Tow, any War Risk related bonus or additional wages in respect of sailing into a War Risk area, then the

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actual War Risk related bonus or additional wages paid shall be reimbursed to the Tugowners by the Hirers at the same time as the next payment of hire is due, or upon delivery of the Tow, whichever occurs first.

- (e) The tug shall have liberty:-
- (i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Tug sails, or other Government to whose laws the Tugowners are subject, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;
 - (ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;
 - (iii) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Tugowners are subject, and to obey the orders and directions of those who are charged with their enforcement;
 - (iv) to call at any other port to change the crew or any part thereof or other persons on board the Tug or Tow when there is reason to believe that they may be subject to internment, imprisonment or other sanctions.
- (f) If the performance of this Agreement or the voyage to the place of departure would in the ordinary course of events require the Tug and/or Tow to pass through or near to an area where after this Agreement is made there is or there appears to be danger of such area being blocked or passage through being restricted or made hazardous by War or Other Risks then:
- (i) The Tug shall not be required to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to, search and/or confiscation.
 - (ii) If the Tug has not entered such area en route to the place of departure, or having entered has become trapped therein, the Hirer shall pay a Delay Payment at the rate specified in Box 30 for every day of the resulting delay. Provided that if the delays under this Clause amount to more than 14 days in aggregate either party hereto shall be entitled to terminate this Agreement by giving notice in which event, save for liabilities already accrued, neither party shall be under any further liability to the other but the Tugowner shall not be bound to repay to the Hirer any payments already made and all amounts due shall remain payable.
 - (iii) If the Tug and Tow whilst en route to the place of destination have not entered such area during the course of the towage or other service the Hirer shall pay Delay Payment at the rate indicated in Box 30 for every day by which the towage is prolonged by reason of waiting for such area to become clear and/or safe and/or by reason of proceeding by a longer route to avoid or pass such area in safety.
 - (iv) If the Tug and Tow whilst en route to the place of destination have become trapped in such area during the course of the towage or other service, the Hirer shall pay a Delay Payment at the rate specified in Box 30 for every day of the resulting delay.
- (g) If in accordance with their rights under the foregoing provisions of this Clause, the Tugowners refuse to proceed from the place of departure or to the place of destination, or any one or more of them, they shall immediately notify the Hirers requesting them to nominate a place for redelivery of the Tow. Failing such nomination by the Hirers within 48 hours of the receipt of such notice and request, the Tugowners may redeliver the Tow at any place where the Hirer can take repossession of the Tow.

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- (h) If in compliance with any of the provisions of this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Agreement.

28. Lien

Without prejudice to any other rights which he may have, whether in rem or in personam, the Tugowner, by himself or his servants or agents or otherwise shall be entitled to exercise a possessory lien upon the Tow in respect of any sum howsoever or whatsoever due to the Tugowner under this Agreement and shall for the purpose of exercising such possessory lien be entitled to take and/or keep possession of the Tow; provided always that the Hirer shall pay to the Tugowner by himself or his servants or agents or otherwise all reasonable costs and expenses and all costs of recovering same, including legal fees, howsoever or whatsoever incurred by or on behalf of the Tugowner by himself or his servants or agents or otherwise in exercising or attempting or preparing to exercise such lien and the Tugowner by himself or his servants or agents or otherwise shall be entitled to receive from the Hirer the Tug's Delay Payment at the rate specified in Box 30 for any reasonable delay to the Tug resulting therefrom.

29. Warranty of Authority

If at the time of making this Agreement or providing any service under this Agreement other than towing at the request, express or implied, of the Hirer, the Hirer is not the owner of the Tow referred to in Box 4, the Hirer expressly represents that he is authorised to make and does make this Agreement for and on behalf of the owner of the said Tow and agrees that both the Hirer and the owner of the Tow are bound jointly and severally by the provisions of this Agreement.

30. General

- (a) If any one or more of the terms, conditions or provisions in this Agreement or any part thereof shall be held to be invalid, void or of no effect for any reason whatsoever, the same shall not affect the validity of the remaining terms, conditions or provisions which shall remain and subsist in full force and effect.
- (b) For the purpose of this Agreement unless the context otherwise requires the singular shall include the plural and vice versa.

31. Time for Suit

Save for the indemnity provisions under Clause 25 (Liability and Indemnity) of this Agreement, any claim which may arise out of or in connection with this Agreement or of any towage or other service to be performed hereunder shall be notified within 6 months of delivery of the Tow or of the termination of the towage or other service for any reason whatever, and any suit shall be brought within one year of the time when the cause of action first arose. If either of these conditions is not complied with the claim and all rights whatsoever and howsoever shall be absolutely barred and extinguished.

Any extension of time granted by the Tugowner to the Hirer or any indulgence shown relating to the time limits set out in this Agreement shall not be a waiver of the Tugowner's right under this Agreement to act upon the Hirer's failure to comply with the time limits.

32. BIMCO ISPS/MTSA Clause 2005

- (a) (i) The Tugowner shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Tug and "the Company" (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Tugowner shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the "Owner" (as defined by the MTSA).

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- (ii) Upon request the Tugowner shall provide the Hirer with a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) and the full style contact details of the Company Security Officer (CSO).
- (iii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Tugowner or "the Company"/"Owner" to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Tugowner's account, except as otherwise provided in this Agreement.
- (b) (i) The Hirer shall provide the Tugowner and the Tugmaster with their full style contact details and, upon request, any other information the Tugowner requires to comply with the ISPS Code/MTSA.
- (ii) Loss, damages or expense (excluding consequential loss, damages or expense) caused by failure on the part of the Hirer to comply with this Clause shall be for the Hirer's account, except as otherwise provided in this Agreement, and any delay caused by such failure shall be paid at the delay payment rate stated in Box 30.
- (c) Provided that the delay is not caused by the Tugowner's failure to comply with its obligations under the ISPS Code/MTSA, the following shall apply:
- (i) Notwithstanding anything to the contrary provided in this Agreement, the Vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code/MTSA.
- (ii) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code/MTSA shall be paid at the delay payment rate stated in Box 30, unless such measures result solely from the negligence of the Tugowner, Tugmaster or crew or the previous trading of the Tug, the nationality of the crew or the identity of the Tugowner's managers.
- (d) Notwithstanding anything to the contrary provided in this Agreement, any costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, vessel escorts, security fees or taxes and inspections, shall be for the Hirer's account, unless such costs or expenses result solely from the negligence of the Tugowner's, Tugmaster or crew or the previous trading of the Tug, the nationality of the crew or the identity of the Tugowner's managers. All measures required by the Tugowner to comply with the Ship Security Plan shall be for the Tugowner's account.
- (e) If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.

33. BIMCO Dispute Resolution Clause

- (a) *This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

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Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- (b) *This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Agreement shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.
- (c) *This Agreement shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.
- (d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement.

In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:-

(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.

(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.

(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.

(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

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(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)

- (e) If Box 40 is not appropriately filled in, sub-clause (a) of this Clause shall apply. Sub-clause (d) shall apply in all cases.

*Note: Sub-clauses (a), (b) and (c) are alternatives; indicate alternative agreed in Box 40.

34. Security for Claims

Either party shall have the option to bring proceedings in rem, but only to obtain security or other similar remedy for claims arising under this Agreement against any vessel or property owned by the other party in any state or jurisdiction where such vessel or property may be found.

35. BIMCO Notices Clause

- (a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Agreement shall be in writing.
- (b) For the purposes of this Agreement, "in writing" shall mean any method of legible communication. A notice may be given by any effective means including, but not limited to, cable, telex, fax, e-mail, registered or recorded mail, or by personal service.

Sample copy

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ANNEX A

1. General	
(a) Vessel's name	Previous name(s):
(b) Builder:	Year:
(c) Type:	Modification(s):
(d) Classification and Society:	
(e) Flag:	Port of registry:
(f) Date of next scheduled drydocking:	
(g) LR/IMO number: /	

2. Performance		
(a) Bollard pull (tonnes):	Certificate date:	
(b) Speed/Consumption (in ballast): Daily fuel consumption in fair weather, per 24 hours:		
Maximum speed: knots	tonnes plus	litres luboil
Economic speed: knots	tonnes plus	litres luboil
Standby (main engines secured):	tonnes plus	litres luboil
(c) Type(s) and grade of fuel and luboil used:		

3. Dimensions and capacities		
(a) L.O.A. (metres):	Breadth (metres):	Depth (metres):
Max draught, metres:	Minimum draught, metres:	
(b) Deadweight (metric tonnes):	(c) GT/NT:	/
(d) Suez/Panama tonnages:	(e) Certificate(s):	/
Fuel maximum:		

4. Machinery
(a) BHP/Number of engines:
/
(b) Engine builder:
(c) Generators:
(d) Bow thruster(s):
(e) Stern thruster(s):

5. Towing equipment	
(i) Towing winches (type/make):	
(ii) Stern roller:	
(iii) Shark jaws:	(iv) Towing pins:
Towing wires and equipment:	
(i) Towing wires and equipment:	(ii) Certificate numbers and dates:

Main tow wires:
Spare tow wires(s) (state if on/off winch):
Pennants, chains, bridles and other towing equipment:

6. Navigation and communication equipment:			
Radar 1:		Radar 2:	
DGPS navigator:		AIS:	
SSAS:		ECDIS:	
Chart plotter:			
Echo sounder:		Gyro compass:	
DGPS navigator:		Speed log:	
SSB:		VHF:	
GMDSS:			
Satcom:	Tel:	Fax:	E-mail:
Mobile phone(s):			
Other e.g., Navtex:			

7. Firefighting equipment:	
Class:	Water spray:
Portable:	
Monitors:	

8. Accommodation:	
Crew:	Passengers:
Cabins:	Air-conditioned (yes/no)
Heating:	
Hospital:	

9. Standby/Rescue and safety equipment:
Lifeboat(s)/Workboat:
Zodiac/RIB:
Survival suits and equipment:

Sample copy