

26 October 2015

## **AMENDED UNITED KINGDOM STANDARD CONDITIONS FOR TOWAGE AND OTHER SERVICES**

1. (a) The agreement between the Tugowner and the Hirer is and shall at all times be subject to and include each and all of the conditions hereinafter set out.

(b) For the purpose of these conditions:

(i) "towing" is any operation in connection with the holding, pushing, pulling, moving, escorting or guiding of the Hirer's vessel, including preparations and manoeuvres to do the same, and the expressions "to tow", "being towed" and "towage" shall be defined likewise.

(ii) "vessel" shall include any vessel, craft or object of whatsoever nature (whether or not coming within the usual meaning of the word "vessel") which the Tugowner agrees to tow or to which the Tugowner agrees at the request, express or implied, of the Hirer, to render any service of whatsoever nature other than towing.

(iii) "tender" shall include any vessel, craft or object of whatsoever nature which is not a tug but which is provided by the Tugowner for the performance of any towage or other service.

(iv) The expression "whilst towing" shall cover the period commencing when the tug or tender is in a position to receive orders direct from the Hirer's vessel to commence pushing, holding, moving, escorting, or guiding the vessel or to pick up ropes or lines, or when the tow rope has been passed to or by the tug or tender, whichever is the sooner, and ending when the final orders from the Hirer's vessel to cease pushing, holding, moving, escorting or guiding the vessel or to cast off ropes or lines has been carried out, or the tow rope has been finally slipped, whichever is the later, and the tug or tender is safely clear of the vessel.

(v) Any service of whatsoever nature to be performed by the Tugowner other than towing shall be deemed to cover the period commencing when the tug or tender is placed physically at the disposal of the Hirer at the place designated by the Hirer, or, if such be at a vessel, when the tug or tender is in a position to receive and forthwith carry out orders to come alongside and shall continue until the employment for which the tug or tender has been engaged is ended. If the service is to be ended at or off a vessel the period of service shall end when the tug or tender is safely clear of the vessel, or if it is to be ended elsewhere, then when any persons, baggage, goods, mails, specie, ship or engine parts or gear or articles of whatsoever description have been landed or discharged from the tug or tender and/or the service for which the tug or tender has been required is ended.

(vi) The word "tug" shall include "tugs", the word "tender" shall include "tenders", the word "vessel" shall include "vessels", the word "Tugowner" shall include "Tugowners", and the word "Hirer" shall include "Hirers".

(vii) The expression "Tugowner" shall include any person or body (other than the Hirer or the owner of the vessel on whose behalf the Hirer contracts as provided in Clause 2 hereof) who is a party to this agreement whether or not he in fact owns any tug or tender, and the expression "other Tugowner" contained in Clause 7 hereof shall be construed likewise.

2. If at the time of making this agreement or of performing the towage or of rendering any service other than towing at the request, express or implied, of the Hirer, the Hirer is not the owner of the vessel referred to herein as "the Hirer's vessel", 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 vessel subject to each and all of these conditions and agrees that both the Hirer and the Owner are bound jointly and severally by these conditions.

3. Whilst towing or whilst at the request, express or implied, of the Hirer, rendering any service other than towing, the master and crew of the tug or tender shall be deemed to be the servants of the Hirer and under the control of the Hirer and/or his servants and/or his agents, and anyone on board the Hirer's vessel who may be employed and/or paid by the Tugowner shall likewise be deemed to be the servant of the Hirer and the Hirer shall accordingly be vicariously liable for any act or omission by any such person so deemed to be the servant of the Hirer.

4. Whilst towing, or whilst at the request, either express or implied of the Hirer, rendering any service of whatsoever nature other than towing:

(a) The Tugowner shall not be responsible for or be liable:

(i) for damage of any description done by or to the tug or tender, or done by or to the Hirer's vessel or done by or to any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer's vessel or the tug or tender or by or to any other object or property; or

(ii) for the loss of the tug or tender or the Hirer's vessel or of any cargo or other thing on board or being loaded on board or intended to be loaded on board the Hirer's vessel or the tug or tender or any other object or property; or

(iii) for any personal injury or loss of life howsoever and wheresoever caused including personal injury or loss of life of the master and/or crew of any/or any person on board the tug or tender; or

(iv) for any claim by a person not a party to this agreement for loss or damage of any description whatsoever, arising from any cause, including (without prejudice to the generality of the foregoing) negligence at any time of the Tugowner's servants or agents, unseaworthiness, unfitness or breakdown of the tug or tender, its machinery, boilers, towing gear, equipment, lines, ropes or hawsers, lack of fuel, stores, speed or otherwise; and

(b) The Hirer shall be responsible for, pay for and indemnify the Tugowner against and in respect of any loss or damage and any claims of whatsoever nature or howsoever arising or caused whether covered by the provisions of clause 4(a) hereof or not (including any arising from or caused by the negligence of the Tugowner or his servants or agents) including the loss of or damage to the tug or tender, provided that the Hirer shall not be liable to the Tugowner for or in respect of loss, damage or claims which the Hirer proves (the burden of proof being on the Hirer) to have been solely caused by the failure of the Tugowner, and due to the actual fault or privity of the Tugowner, to make his tug or tender seaworthy for the towage or service other than towage.

Provided however, notwithstanding anything hereinbefore contained, the Tugowner shall under no circumstances be responsible for or be liable for any loss or damage caused or contributed to, by or arising out of any delay or detention of the Hirer's vessel or of the cargo on board or being loaded on board or intended to be loaded on board the Hirer's vessel or of any other object or property or of any person, or any consequences thereof, whether or not the same shall be caused or arise whilst towing or whilst at the request, either express or implied of the Hirer, rendering any service of whatsoever nature other than towing or at any other time whether before, during or after the making of this agreement.

5. To the extent permitted by law, and subject to this agreement, the Tugowner excludes all liability including liability under implied conditions, warranties and guarantees except any implied condition, warranty or guarantee, the exclusion, restriction or modification of which would cause this clause to be void, such condition, warranty or guarantee being referred to in this agreement as a "non-excludable condition".

6. If, notwithstanding anything contained in these conditions:

(a) any guarantee provided for in Part 3-2 Division 1 of the Australian Consumer Law (as embodied in Schedule 2 to the Competition and Consumer Act 2010 (Cth)) (the "**Consumer Law Guarantees**") as

amended, applies to the supply of any services by the Tugowner pursuant to this agreement and the Tugowner's liability in relation to such guarantees is not excluded, restricted or modified by the preceding clauses of this agreement; or

(b) any other non-excludable condition continues to apply to the Tugowner's supply of services to the Hirer, then:

(c) to the extent permitted by law, the Tugowner limits its liability to the Hirer for any failure to comply with any such non-excludable condition to the supplying of the service again or the payment of the cost of having the service supplied again, as determined by the Tugowner; and

(d) the Hirer acknowledges that it is fair and reasonable for the Tugowner to have and rely on the rights contained in clause 6(c).

7. The Tugowner shall at any time be entitled to substitute one or more tugs or tenders for any other tug or tender or tugs or tenders. The Tugowner shall at any time (whether before or after the making of this agreement between him and the Hirer) be entitled to contract with any other Tugowner (hereinafter referred to as "the other Tugowner") to hire the other Tugowner's tug or tender and in any such event it is hereby agreed that the Tugowner is acting (or is deemed to have acted) as the agent for the Hirer, notwithstanding that the Tugowner may in addition, if authorised whether expressly or impliedly by or on behalf of the other Tugowner, act as agent for the other Tugowner at any time and for any purpose including the making of any agreement with the Hirer. In any event should the Tugowner as agent for the Hirer contract with the other Tugowner for any purpose as aforesaid it is hereby agreed that such contract is and shall at all times be subject to the provisions of these conditions so that the other Tugowner is bound by the same and may as a principal sue the Hirer thereon and shall have the full benefit of these conditions in every respect expressed or implied therein.

8. Nothing contained in these conditions shall limit, prejudice or preclude in any way any legal rights which the Tugowner may have against the Hirer including, but not limited to, any rights which the Tugowner or his servants or agents may have to claim salvage remuneration or special compensation for any extraordinary services rendered to vessels or anything aboard the vessels by any tug or tender. Furthermore, nothing contained in these conditions shall limit, prejudice or preclude in any way any right which the Tugowner may have to limit his liability.

9. The Tugowner will not in any event be responsible or liable for the consequences of war, riots, civil commotions, acts of terrorism or sabotage, strikes, lockouts, disputes, stoppages or labour disturbances (whether he be a party thereto or not) or anything done in contemplation of furtherance thereof or delays of any description, however caused or arising, including by the negligence of the Tugowner or his servants or agents.

10. The Hirer of the tug or tender engaged subject to these conditions undertakes not to take or cause to be taken any proceedings against any servant or agent of the Tugowner or other Tugowner whether or not the tug or tender be substituted or hired or the contract or any part thereof has been sublet to the owner of the tug or tender, in respect of any negligence or breach of duty or other wrongful act on the part of such servant or agent which, by for this present provision, it would be competent for the Hirer so to do and the owners of such tug or tender shall hold this undertaking for the benefit of their servants and agents.

11. The agreement between the Tugowner and the Hirer shall be governed by the laws applicable in the State or Territory in which the service is provided and the Tugowner and the Hirer agree to submit to the non-exclusive jurisdiction of the courts of that State or Territory.