

General Towage Conditions

1. Definitions

Assistance: Services rendered in Close Proximity of a manned Towed Object under the command of its master or pilot, as the case may be.

Contract of Affreightment: Contract in the sense of § 407 German Commercial Code (*Handelsgesetzbuch, HGB*).

Customer: The party which has contracted with the Tug Owner to perform the Services.

Material Obligation: An obligation which needs to be complied with in order to allow for the proper performance of the contract and the compliance of which the contractual partner can regularly rely on.

Services: The operations carried out by the Tug Owner in relation to a Towed Object or otherwise in fulfilment of the order by the Customer, including but not limited to Assistance.

Close Proximity: The area within which the Tug and the Towed Object affect or may affect each other or are or may be subject to the influence of each other.

Voyage Charter Party: Contract in the sense of § 527 HGB.

Towed Object: Any floating object, including, in particular, seagoing vessels, whether manoeuvrable or not, in respect of which the Services are being rendered.

Tug: The tug or tugs including their master and crew and equipment actually performing the Services, whether or not owned by the Tug Owner or by third parties (see Clause 2.3 below).

Tug Owner: The party which undertakes to perform the Services.

Ocean Freight Agreement: Contract for the carriage of general cargo or Voyage Charter Party.

Contract for the carriage of general cargo: Contract in the sense of § 481 HGB.

2. Provision of Services

- (1) All Services of the Tug Owner – including future services – shall be rendered exclusively on the basis of these General Towage Conditions, unless otherwise expressly agreed.
- (2) When Services are rendered in respect of manned Towed Objects which are under the command of a master or pilot, the duty of the Tug Owner shall be limited to making the Tug's services available to carry out the instructions of the Towed Object's master or pilot, as the case may be.
- (3) The Tug Owner is entitled to make use of one or more Tugs owned by third parties.
- (4) If the provision of the Services is impossible or significantly more difficult due to circumstances beyond the Tug Owner's control, in particular weather constraints, e. g. storm, ice or bad visibility, the Tug Owner shall be under no obligation to provide the Services.
- (5) Other vessels, for instance inbound vessels, may have to be served with priority according to the customs of the port, in particular with regard to nautical conditions, or because of port authori-

ties 'orders. The Tug Owner shall always be entitled to render emergency assistance to people or crafts. This may lead to delays when rendering the Services, for which the Tug Owner shall not be responsible.

- (6) In the cases referred to in Clauses 2.4 and 2.5 sentences 1 and 2, the Tug Owner shall also be entitled to interrupt the Services rendered, whereby appropriate regard shall be had to the safety of the Towed Object. Once the cause for the interruption of Services has ceased, the Tug Owner shall resume with the Services without undue delay.

3. Further Obligations for the Secure Provision of Services

- (1) The Customer shall ensure that the Towed Object and the towing gear provided by the Customer is in all respects ready to allow the safe performance of the required Services, that all safety regulations relevant to the Towed Object are observed, that all required permissions in respect of the Towed Object and the Services are available and conditions imposed in such permissions are observed.
- (2) The Customer shall further ensure that the master or pilot, as the case may be, of the Towed Object gives orders to the Tug and the crew of the Towed Object in such a way that neither the Towed Object nor the Tug or interests of third parties are exposed to danger.
- (3) The Customer as well as the Tug Owner have to ensure respectively that the taking over and return/taking back of towing gear is carried out in a controlled manner. The Customer is responsible for the uninterrupted control and supervision on board of the Towed Object and the Tug Owner is responsible for the uninterrupted control and supervision on board of the Tug.

4. Remuneration

- (1) If the amount of remuneration has not been stipulated, the Tug Owner is entitled to determine the amount at reasonable discretion.
- (2) The agreed remuneration does not cover any extraordinary services or salvage services.
- (3) The remuneration is payable at the Tug Owner's place of business upon rendering the invoice.
- (4) The Customer is only entitled to set-off if he has obtained a final and binding judgment against the Tug Owner or if the Customer's claim(s) against the Tug Owner are undisputed.

5. Customer's Liability

- (1) The Customer shall be liable for any damage to the Tug caused by the Tug's activities during the time of Assistance, unless the damage was caused negligently or intentionally by the Tug Owner, his servants or sub-contractors or the Tug's master or crew.
- (2) The Customer shall be liable for any damage to the Tug incurred during the time of Assistance as a consequence of the Tug following an order or direction given by the Towed Object's master or pilot, as the case may be, unless the damage was caused by gross negligence or intentional acts of the Tug Owner, his servants or subcontractors or the Tug's master or crew.
- (3) Further the Customer is liable for loss or damage suffered by third parties in the course of the Assistance due to the Tug's manoeuvres carried out upon the orders and directions of the Towed Object's master or pilot, as the case may be, unless the loss or damage was caused by gross neg-

ligence or intentional acts or the non-observance of an Material Obligation , as the case may be, by the Tug Owner, his servants or sub-contractors or the Tug's master or crew.

- (4) In relation to Clauses 5.1 through 5.3 above, the burden of proof in respect of any negligence, gross negligence or intentional act of the Tug Owner, his servants or subcontractors or the Tug's master or crew as well as any non-observance of an Material Obligation by either of them shall rest with the Customer.
- (5) Whenever the Tug is out of service due to damage or due to other reasons for which the Customer is liable, the Tug Owner may recover loss of use . The Tug Owner ist entitled to determine the amount of loss of use at reasonable discretion.. His duty to mitigate damages (paragraph 254 German Civil Code) remains unaffected. If Services are rendered by a Tug owned by a third party (see Clause 2.3 above), that third party is also entitled to rely upon the foregoing provisions.
- (6) In case of Services rendered by a Tug owned by a third party, the losses suffered by that third party are considered to be the Tug Owner's own losses which he is, thus, entitled to liquidate (*Drittschadensliquidation*).
- (7) The foregoing provisions do not in any way affect other rights, claims or remedies the Tug Owner may have against the Customer, be it in contract or tort.

6. Tug Owner's Liability

- (1) The Tug Owner shall be liable for loss or damage suffered by the Customer only to the extent that it was caused by gross negligence or intentional acts of the Tug Owner, his servants or sub-contractors or the Tug's master or crew. This does not apply if the loss or damage is due to the non-observance of any of the Tug Owner's Material Obligation.
- (2) In case of damage caused by negligence, the Tug Owner shall only be liable in respect of a breach of a Material Obligation and limited to direct loss or damage which is reasonably foreseeable, but not for remote consequential loss.
- (3) In respect of loss or damage caused by delayed Services, Clauses 6.1 and 6.2 and Clause 2.5 shall apply. The Tug Owner's liability shall be limited to three times the remuneration which is or would have been payable by the Customer, unless the delay was caused intentionally or by gross negligence.
- (4) In case an Ocean Freight Agreement has been concluded, the Tug Owner is not liable for any damage caused by conduct in the course of steering or otherwise operating the towing vessel, safe in case of measures taken predominantly for the benefit of the cargo or if caused by fire or explosion on board of the towing vessel.
- (5) Clauses 6.1 through 6.3 are not applicable as far as a Contract of Affreightment is concerned. Clauses 6.1 and 6.2 are not applicable in cases of a Contract for the carriage of general cargo. Insofar the statutory provisions shall be applicable.
- (6) Clauses 6.1 through 6.3 above do not apply to personal injury claims. In such cases, the relevant statutory provisions shall apply.
- (7) In case the Tug Owner is considered to be a carrier, his liability in respect of loss of or damage to the goods including the Towed Object shall – in derogation from § 431 HGB – not exceed

2 Special Drawing Rights of the International Monetary Fund per kilogram of any goods lost or damaged.

- (8) In any event the Tug Owner shall be entitled to limit his liability as provided for in provisions on ship owners' limitation of liability applicable to the Tug which caused the damage, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the protocol of 2 May 1996, in the version respectively valid for the Federal Republic of Germany, or the Convention on Limitation of Liability in Inland Waterway Shipping (CLNI), 1988, or any national legislation, as the case may be. This also applies if the Tug provided by the Tug Owner to perform the Services is not owned, chartered, leased, managed or operated by the Tug Owner.
- (9) The exclusions and limitations referred to in Clauses 6.1 through 6.9 above shall apply to any claim be it in contract or otherwise against the Tug Owner. They shall also apply in favour of his servants or sub-contractors including, in particular, any third party owner of the Tug as well as the Tug's master and crew.

7. Indemnity

The Customer shall indemnify the Tug Owner for all third party claims in respect of loss or damage for which, as between the Tug Owner and the Customer, the Customer is liable.

8. Law and Jurisdiction

The contract for tug boat services is subject to German law. Any and all disputes arising under the contract or in connection with the Services rendered shall be subject to the exclusive jurisdiction of the courts of the Tug Owner's place of business.

9. German Version

The German version of these General Towage Conditions shall prevail.

(Version January 2015)